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IN THE

Supreme Court of the United States

METRO-GOLDWYN-MAYER STUDIOS INC., *ET AL.*,
Petitioners,

v.

GROKSTER, LTD., *ET AL.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX
Volume II

KENNETH W. STARR
STEVEN A. ENGEL
SUSAN E. ENGEL
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5000

DONALD B. VERRILLI, JR. *
IAN HEATH GERSHENGORN
WILLIAM M. HOHENGARTEN
STEVEN B. FABRIZIO
THOMAS J. PERRELLI
JENNER & BLOCK LLP
601 Thirteenth Street, N.W.
Washington, DC 20005
(202) 639-6000

RUSSELL J. FRACKMAN
GEORGE M. BORKOWSKI
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Blvd.
Los Angeles, CA 90064
(310) 312-2000

DAVID E. KENDALL
ROBERT J. SHAUGHNESSY
THOMAS G. HENTOFF
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000

* *Counsel of Record*

Counsel for Motion Picture Studio and Recording Company Petitioners
Additional Counsel Listed on Inside Cover

PETITION FOR CERTIORARI FILED OCTOBER 8, 2004
CERTIORARI GRANTED DECEMBER 10, 2004

Additional Counsel from Front Cover

ROBERT M. SCHWARTZ
DREW E. BREUDER
O'MELVENY & MYERS LLP
1999 Avenue of the Stars
Los Angeles, California 90067
(310) 553-6700

Counsel for Petitioners Warner Bros. Entertainment Inc. and New Line Cinema Corporation

GREGORY P. GOECKNER
DEAN C. GARFIELD
MOTION PICTURE ASSOCIATION OF AMERICA, INC.
15503 Ventura Boulevard
Encino, CA 91436
(818) 995-6600

STANLEY PIERRE-LOUIS
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.
1330 Connecticut Avenue, N.W.
Suite 300
Washington, DC 20036
(202) 775-0101

KATHLEEN R. HARTNETT
MATTHEW HERSH
BRIAN HAUCK
JENNER & BLOCK LLP
601 Thirteenth Street, N.W.
Washington, DC 20005
(202) 639-6000

Counsel for Motion Picture Studio and Recording Company Petitioners

CAREY R. RAMOS *
PETER L. FELCHER
AIDAN SYNNOTT
THEODORE K. CHENG
JOHN H. LONGWELL
BRIAN L. URBANO
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3324

KELLI L. SAGER
ANDREW J. THOMAS
JEFFREY H. BLUM
JEFFREY L. FISHER
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street
Los Angeles, CA 90017
(213) 633-6800

Counsel for Music Publisher and Songwriter Petitioners

MARK A. LEMLEY
MICHAEL H. PAGE *
KEKER & VAN NEST, LLP
710 Sansome Street
San Francisco, CA 94111
(415) 391-5400

Counsel for Respondent Grokster, Ltd.

RICHARD G. TARANTO
FARR & TARANTO
Suite 800
1220 19th Street, N.W.
Washington, DC 20036-2435
(202) 775-0184

Counsel for Respondents

CINDY A. COHN *
FRED VON LOHMANN
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333 x108

CHARLES S. BAKER
PORTER & HEDGES, LLP
700 Louisiana Street
Suite 3500
Houston, TX 77022
(713) 226-0676

MATTHEW A. NECO
WENDY MILLAR GOODKIN
STREAMCAST NETWORKS, INC.
20969 Ventura Boulevard
Woodland Hills, CA 91364
(818) 887-8610

Counsel for Respondent StreamCast Networks, Inc.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

METRO-GOLDWYN-MAYER STUDIOS INC., et al., Plaintiffs, v. GROKSTER, LTD., et al., Defendants. [Filed Oct. 15, 2002]	Case No. CV 01 08541 SVW (PJWx) (Consolidated with CV 01 09923 SVW (PJWx))

DECLARATION OF ELLIS HOROWITZ IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

1. My name is Ellis Horowitz and I currently hold the position of Professor of Computer Science and Electrical Engineering at the University of Southern California. I have been asked by plaintiffs in this case to evaluate the functioning and operation of the current "Morpheus" system operated by defendant MusicCity. This declaration sets forth my findings and conclusions. The observations and conclusions set forth below are based upon my specialized knowledge, education and experience as applied to the facts and circumstances of this case. If called upon, I could and would testify to the matters contained herein.

2. I have read the declaration previously submitted by Professor Leonard Kleinrock in connection with plaintiffs' motion for summary judgment. In so far as there is overlap in the areas Professor Kleinrock and I have examined (in other words, in so far as Professor Kleinrock's testimony relates to the current Morpheus system), I have considered and concur with his findings and conclusions. I am informed and understand that MusicCity did not make the Morpheus

2.0 source code available to plaintiffs or to Professor Kleinrock prior to the time Professor Kleinrock submitted his declaration. I have had an opportunity to study that source code.[1] One of my areas of particular expertise is software and source code analysis. Accordingly, my findings here both confirm and supplement those of Professor Kleinrock.

3. In addition to the Morpheus 2.0 source code, I have reviewed other materials in this case, including declarations submitted by Darrell Smith, MusicCity's Chief Technology Officer, and Dr. Steven Gribble, as well as the deposition testimony given by those two gentlemen. I have studied the Morpheus 2.0 user application in operation, and have conducted, supervised and/or analyzed the results of certain testing of the Morpheus 2.0 application in order to confirm my understanding of the source code and many of my findings and conclusions discussed below. Finally, I have reviewed other public source materials and artifacts as necessary to support my findings and conclusions.

4. My declaration will be organized as follows: Section 1 will outline my major conclusions, Section 2 will provide the Court with a statement of my background and qualifications, and Section 3 will explain my findings and conclusions is some detail. Morpheus 2.0 is the current application being distributed and supported by MusicCity. Thus, unless otherwise stated, reference to the Morpheus source code, client application or users will mean the Morpheus 2.0 source code, application and users.

[1] Principally, I have reviewed Morpheus source code for version 2.0.1.6. In addition, I very recently obtained a copy of the source code for Morpheus version 2.0.1.9, and have reviewed that for certain specific propositions discussed herein.

Section 1: Overview of Major Conclusions

5. My conclusions are organized around a few discrete topics: (a) the inherent nature of software; (b) the capabilities that MusicCity built into the Morpheus source code which give it ultimate dominion and control over its users; (c) the aspects of the Morpheus source code that reveal a regular participation by MusicCity in the ongoing operation of the system; (d) the many central points of communication in which the Morpheus application engages in the ordinary course of its operation; and (e) the capability built into the source code that causes Morpheus automatically, without the input or consent of the user, to offer for distribution any files in certain folder's on the user's computer. Lastly, I discuss a very recent upgrade to the virus filtering in the Kazaa 2.0 application as a point of illustration of a possible copyright filtering mechanism for the Morpheus user application. (Kazaa 2.0 is a client application on the FastTrack network, and is distributed by defendant Sharman Networks.)

6. *The Inherent Nature of Software.* Software is not the product of an immaculate conception. The operations of a software application are the result of innumerable conscious, affirmative decisions. Moreover, by its very nature, software is not immutable. One of the great benefits of software is that it readily can be modified to reflect "bug" fixes, upgrades, feature enhancements, or other modifications. Simply put, if one has an ability to control the source code, then one has an ability to control the operation and features of the application. In terms of a client application for a file-trading system (such as Morpheus), the ability to control the client application source code gives MusicCity the ability to exercise substantial control over its Morpheus users and how they use the system.

7. *MusicCity's Ultimate Control Over Its Users.* The underlying source code for the Morpheus application gives

MusicCity the ability, from its central servers, to *force* all of its Morpheus users to accept any modifications of the Morpheus application that MusicCity chooses to make – whether those modifications consist of a new feature, an upgraded version of the application, or an entirely different application. MusicCity can cause any new application to automatically download to and be installed on its users' computers, without giving users an opportunity to decline the new software. Through this existing control capability, MusicCity can affect the behavior of existing Morpheus users just as readily as users who are downloading the application for the first time. With it, MusicCity could deploy enhanced features that would, for example, limit the distribution and downloading of copyrighted works and/or allow MusicCity to terminate individual users who are found to be infringers.

8. *MusicCity's Ongoing Participation.* Even after the Morpheus user application is deployed to and installed by users, MusicCity maintains the ability to change (and has changed) any number of parameters in the client application – all from a MusicCity central server. These changes in parameters affect how the Morpheus user applications function and behave within the network. Many of these centrally-controlled parameters relate to how the Morpheus user applications communicate with other applications, how they make their connection to the Gnutella network, and how they process search results. They evidence an ongoing participation of MusicCity in the continued operation of the Morpheus user application.

9. *Central Server Facilities.* Morpheus is neither purely peer-to-peer nor purely centralized. Like many systems, there are aspects of the Morpheus system that function in a decentralized peer-to-peer fashion, and there are other aspects that rely on central se[r]vers. While certain exchanges between users are peer-to-peer, Morpheus

involves a significant amount of interaction with central server facilities. In its ordinary use, the Morpheus user application, it communicates regularly with no less than four different logical central servers operated by MusicCity. Some of these se[r]vers are very important to the normal operation of Morpheus; it is through one of these servers that MusicCity exercises the control discussed above. Morpheus also interacts with several other centralized facilities operated by third parties. All participate in the normal operation of Morpheus. As discussed below, without some of these servers, users could not initially connect to the network.

10. *Unauthorized Distribution of User Files.* Upon installation, Morpheus automatically begins offering for distribution any files it finds in certain folders on a user's computer, namely all files in so-called "share" folders for other file-trading applications, including the Kazaa application. This is an automatic process built into the source code and does not involve any action by the user. The user's consent is not sought; nor is notice given to users that this is happening. Furthermore, Morpheus will offer to distribute files from a user's Kazaa folder, for instance, even if that user had taken affirmative steps within the Kazaa application to prevent distribution of those same files through the Kazaa application.

11. *Filtering Scheme.* The recently deployed virus filtering mechanism in the Kazaa 2.0 client application presents one illustration of a design that could be incorporated by MusicCity to limit the distribution and downloading of infringing works by Morpheus users. It demonstrates that these sorts of filtering mechanisms can be (and are) implemented in peer to peer networks.

Section 2: Background And Qualifications

12. As stated, I currently hold the position of Professor of Computer Science and Electrical Engineering at the

University of Southern California. I am a past Chair of the USC Computer Science Department, from 1991 to 1999. I began at USC as an Assistant Professor in 1973; I became a tenured Associate Professor in 1975; and, since 1983, I have been a full Professor. I have also been a visiting Professor at M.I.T. and the Israel Institute of Technology (Technion), and was an IBM Scholar from 1989 to 1993.

13. I am the author of ten books and over eighty journal articles and refereed conference proceedings on computer science subjects. I have been a principal investigator on research contracts from NSF, AFOSR, ONR, and DARPA.

14. My research work for the past decade has been in the field of software engineering. I am a member of the Center for Software Engineering at USC, a research group whose focus is the study and improvement of software development. I have developed or co-developed numerous software systems in conjunction with the Center. In addition, from 1983 to 1993, I was the co-founder and CEO of Quality Software Products, a California company that specialized in the development of UNIX application software.

15. Among my current research interests are software development across the Internet, GRID technology, and peer-to-peer computing.

16. I have a Bachelor of Science (B.S.) degree from Brooklyn College (1964), and a Masters of Science (M.S.) and a Doctor of Philosophy (Ph.D.) degree in Computer Science from the University of Wisconsin (1967, 1970).

17. A current copy of my Curriculum Vitae is attached as Exhibit 1.

Section 3: Findings And Conclusions

A. THE NATURE OF SOFTWARE.

18. There are two related but independent concepts regarding software in general that, I believe, may serve as a useful backdrop for the Court's analysis. First is the concept that software is the direct product of countless deliberate decisions, typically by the developers and/or those for whom the software is being developed. Software does not self-generate. It is the many development decisions that dictate what features and capabilities the software exhibits. If you have an ability to influence the development of the source code, then you have an ability to control the features and capabilities of the resulting software application. Additionally, in the case of peer-to-peer client applications, this means you have the ability to control how your users interact within that network.

19. The second concept relates to the ease and regularity with which software is revised and upgraded. Software is rarely considered fixed in perpetuity. To the contrary, the industry norm is that software is routinely upgraded. Software programs distributed to end-users are often subject to frequent upgrades. Sometimes upgrades are to fix minor problems or "bugs"; many times upgrades are to add additional features or to enhance existing ones. Regardless of the reason, this is an extremely common practice, and one that allows applications to evolve over time. Peer-to-peer systems are no different in this respect, and through revisions to the client application software, the systems have the ability to evolve over time.

20. One final general point about software is that it is customary in the industry, and in every software environment of which I am aware, to have some form of license agreement or terms of service with end users. This is true whether or not an application is sold to end users or given to them for free. Typically, such agreements govern both the rights and limitations on the end users use of the application, and the

continuing relationship between licensor and end user. Apparently, MusicCity has chosen not to have any such agreement with its users. That decision represents, in my experience, a striking departure from a uniform industry practice. It is difficult to think of any valid reason for such an unusual arrangement.

B. THE "AUTO.XML" FEATURE.

21. Morpheus includes a feature that allows MusicCity to communicate with, and to exert substantial influence over, all of its users – even after those users have downloaded and installed the Morpheus application. Because this feature, which I shall refer to as the "auto.xml" feature, is involved in several of the activities which form the basis of my findings and conclusions, I will describe it generally here.

22. The Morpheus user applications have been designed to initiate a communication with a central MusicCity server each time a user starts (or launches) the application, and then again at regular intervals. The intervals can be set and changed by MusicCity. Until recently, the Morpheus applications have communicated with the MusicCity server upon launch and then every hour thereafter. More recently, MusicCity has changed the interval from one hour to 24 hours, so that, currently, each Morpheus application initiates a communication with a central MusicCity server once upon launch and then once every 24 hours thereafter.

23. The MusicCity server contacted by the Morpheus clients is called start.musiccity.com. On the start.musiccity.com server is a file called auto.xml. The auto.xml file contains a series of "tags" that are read and their corresponding stored by the Morpheus applications during each communication with the start.musiccity.com server. These "tags" can provide the application with new information, or they can provide updated or revised values that will change parameters within the Morpheus user's

application. Both the tags themselves, and the values contained in the tags, can be easily changed in the MusicCity central server. The presence or absence of particular tags, as well as the values set within a tag, can affect significant changes in the behavior of the Morpheus user application. MusicCity is able to cause these changes to occur without making a change to the Morpheus source code, but rather by making changes to the auto.xml file on its central start.musiccity.com server.

24. So the Court can have a point of reference, I am attaching, as Exhibit 2, one example of an auto.xml file taken directly from MusicCity's start.musicity.com server.

C. MUSICCITY'S ABILITY TO "FORCE" DOWNLOADS.

25. One major function handled through the auto.xml file is upgrading of the Morpheus application, and both initial downloading and upgrading of two third-party applications that the user can access and use from within the Morpheus client application: (a) Media Manager (an application for organizing and playing media files, such as mp3 music files) and (b) PalTalk (a "chat" and instant messaging, or IM, application). All of these automated download capabilities are accomplished through settings within the auto.xml file, without any need to modify the existing Morpheus source code.

26. *Illustration of Current Morpheus User Application Upgrade Process.* Given the configuration of the auto.xml file contained in Exhibit 2, the upgrading of a Morpheus user application would occur as follows. Upon launch (or at the specified interval), the user application would automatically initiate a communication with start.musiccity.com and would read the auto.xml file. If the value MusicCity has set for one of the tags ("<ver_qual>" or "version qualifier") indicates that the user's application is outdated, the user would be

prompted to accept an upgrade. The prompting is initiated by a tag in auto.xml ("<prompt_download>"), which can be seen towards the top of page two of Exhibit 2. In this case, the user would be presented with a dialog box with the following text: "An upgrade is available which contains connection/search enhancements. Would you like to download it now?" MusicCity can change this text to whatever they want by simply editing it in the auto.xml file. The dialog box would have Yes and No buttons allowing the user to accept or decline the upgrade.

27. If the user accepts the upgrade, the new application would automatically download onto the user's computer either from another user on the network (in a peer-to-peer fashion) or from a MusicCity central server named 141.musiccity.com. The auto.xml file contains a tag for a unique digital signature for the downloaded file ("<sig>") so that the user's application can verify that the upgrade it is downloading is authentic.

28. Once the upgrade application has downloaded onto the user's computer, the user will be prompted to execute or install the application. The prompting for installation is initiated by a tag in auto.xml ("<prompt_execute">), which can be seen just below the prompt download tag at the top of page two of Exhibit 2. In the current configuration, the user would be presented with a dialog box with the following text: "The Morpheus upgrade has been successfully downloaded. Would you like to install it now?" The dialog box, again, would contain Yes and No buttons allowing the user to accept or decline the upgrade. If the use accepts the installation, the program will automatically install on the user's computer. (The program itself might initiate additional prompts to the user during installation, but it need not.)

29. This prompted upgrade, also known as an "auto-upgrade," enables MusicCity to very quickly deploy new versions of the client application in order to fix bugs or other performance problems, to add new features, and/or to enhance existing features.

30. *Illustration of Current Media Manager Download/Installation Process.* When the user downloads Morpheus for the first time, neither the Media Manager nor the PalTalk applications download at the same time. The source code for the Morpheus user application is designed to "trigger" the initial downloading of those applications when the user clicks the appropriate button in the Morpheus user application signaling that the user wishes to use one of the applications. Exhibit 3 contains a screen shot of the Morpheus application showing the Media Manager and Chat/IM buttons (in the upper right-hand corner). The following description is based on the Media Manager application, but the PalTalk application would follow precisely the same process.

31. The portion of the auto.xml file addressing the initial downloading of Media Manager is very similar to the portion addressing an auto-upgrade to the Morpheus client. However, the auto.xml portion for Media Manager contains an additional tag ("<link>MEDIA_MANAGER</link>"), which can be seen at the top of page one of Exhibit 2. This tag in auto.xml provides the "trigger" to initiate the download of the Media Manager application when the user clicks the Media Manager button inside the Morpheus user application.

32. In practice, this operates as follows. When the Morpheus user application communicates with start.musiccity.com and reads the auto.xml file, the application stores internally the information in auto.xml related to the Media Manager, but does not begin the download process. The presence of the

<link>MEDIA_MANAGER</link> tag in auto.xml is read by the Morpheus user application to mean do not proceed until the triggering event has occurred. In this case, the triggering event is a user clicking the Media Manager button in the application.

33. When a user does click that Media Manager button, the Media Manager application automatically downloads onto the user's computer and automatically executes the installation. There is no prompt to the user for either the download or the execution of the installation. The user is not presented with any dialog box giving the user the opportunity to accept or decline the download or installation of the application. The Media Manager application simply downloads (automatically) and begins execution of the installation (automatically) – without any further action by or consent of the user.

34. The reason Media Manager automatically downloads and installs, without presenting the user with accept/decline dialog boxes, is directly related to the configuration of the tags in the auto.xml file. For Media Manager, there is no <prompt_download> tag at all. The result of deleting the <prompt_download> tag is that the application downloads automatically, without seeking consent of the user. The <prompt_execute> tag is also configured differently for Media Manager than for the Morpheus user application. For Media Manager, this auto.xml tag is set to "<prompt_execute>AUTO_EX</prompt_execute>" – which means "auto-execute" or automatically execute – as can be seen at the top of page one of Exhibit 2. This has the effect of starting the installation script automatically, without seeking consent of the user.

35. With respect to the automatic download and installation capability enable by auto.xml, the Morpheus source code is indifferent as to the application being

downloaded. In other words, the Morpheus user application does not care whether the file being downloaded is the Media Manger or an upgraded version of the user application or, for that matter, any other application code. They all follow the same source code logic for this process.

36. The import of this is that MusicCity, for any application it desired to distribute, could very easily edit the auto.xml file, deleting the <prompt_download> tag and changing the <prompt_execute> tag to "AUTO-EX". By doing so, MusicCity would cause any application of its choosing to download and install automatically on a user's computer, without soliciting or receiving any consent from the user

37. This, of course, reveals that MusicCity has ultimate dominion and control over the activities of its users. MusicCity has the ability to "force" its existing Morpheus users to accept a new version of the client application. In doing so, MusicCity could add or modify any feature it wants, including mechanisms to prevent or limit copyright infringement.

38. I have read the deposition testimony of Dr. Steven Gribble. While acknowledging that he had not studied and therefore did not know how the Morpheus source code would react to an auto.xml file modified as I have described above, he did offer a "guess" or a "hope" as he put it that in the absence of the <prompt_download> tag in auto.xml, the Morpheus user's application would still display a dialog box (albeit an empty one) with the Yes/No options. Dr. Gribble also described "an experiment" he would need to conduct to test his hypothesis.

39. I have, in fact, conducted the very experiment that Dr. Gribble describes, and have conclusively determined that the auto.xml and Morpheus user application do in fact function in the matter I have described in this declaration.

My colleagues and I have set up servers to mimic the MusicCity start.musiccity.com server and have observed as our Morpheus user applications interacted with the auto.xml file on that server. We tested this using many different environments, operating systems, and Morpheus user applications. In each and every case, the removal of the <prompt_download> tag and the described modification to the <prompt_execute> tag in auto.xml caused the new code to download and install automatically without any prompting of the user and without any opportunity for the user to decline the upgrade.

D. MUSICCITY'S ONGOING PARTICIPATION.

40. Through the auto.xml file on its central start.musiccity.com server, MusicCity also influences the ongoing activities of its users, and is able to affect both the internal behavior of the deployed Morpheus user applications and their interaction with other client applications on the network. Many of the behaviors that MusicCity can modify centrally are directly related to the file-searching and exchange aspects of Morpheus. MusicCity does not have to modify the Morpheus source code to cause these changes in the functioning of the client applications. The changes are caused by including certain tags, with certain values, in the auto.xml file. When the Morpheus user application reads the auto.xml file (upon launch or at one of the regular intervals), the new tags and/or values affect changes in parameters within the user client application. Some of the pertinent auto.xml tags are discussed below.

41. *Metadata Filtering.* Metadata is data associated with a file that describes the contents of the file. For an mp3 music file, for instance, the metadata will usually consist of the recording title, the artist, the album, the length of the song, the year released, and perhaps other descriptive information. Metadata is used by Morpheus for searching for

files and for organizing media. Not all Gnutella clients support metadata, and Morpheus has its own format for metadata. There is a tag defined in the Morpheus source code ("SHOW_ONLY_METADATA_ RESULTS") that MusicCity could set in the auto.xml file. If MusicCity includes this tag and sets it with a value of "true" or "yes," then the Morpheus user applications will only display to the user search results that contain metadata in the format used by Morpheus. In this way, MusicCity has the ability to create a file-distribution network that consists essentially of only its users.

42. *Hiding "No Slot" Results.* Users running the Morpheus application can set a value through the user interface limiting the maximum number of simultaneous downloads from that user. When the maximum number of download slots has been reached, other users trying to download from that user must wait. There is a tag defined in the Morpheus source code ("HIDE_NO_SLOT_RESULTS") that MusicCity could set in the auto.xml. If MusicCity includes this tag and sets it with a value of "true" or "yes," then once the maximum number of downloads has been reached, the Morpheus user application will no longer match search requests against all files it is offering. Instead, it will match them only against the files that are then-currently being downloaded from it (because those files could immediately be downloaded through a Morpheus feature known as "chain" downloading). Additionally, if the Morpheus user happens to be behind a firewall (see below), then the "hide no slot results" tag, if set to true, would cause the user's application to stop matching search requests against its list of offered files.

43. *Flow Control.* Morpheus clients are constantly receiving and passing on communications and requests from other Gnutella clients. Morpheus includes a way for clients

to deal with and prioritize the backlog of communications that usually exists. Broadly speaking, this is referred to as flow control. There are two different tags in the auto.xml file that have allowed MusicCity to adjust the flow control from its central server. One tag is called flow control ("<fcont>"; the other is called weighting ("<wgtt>"). Both can be observed on the third page of Exhibit 2, towards the bottom of the page.

44. *Firewall Testing.* As a general matter, if two users are both behind a firewall, then they cannot download files from each other. If only one user is, they can trade files, but must do it in a way that gets around the firewall. Knowing which users are behind firewalls and acting accordingly is not a trivial matter. There is a tag ("ALLOW_FIREWALL_TESTING") that is written into the source code and read for in the auto.xml file that gives MusicCity the ability to address the firewall problem centrally. When set in the auto.xml, this tag will cause Morpheus user applications to take actions to ascertain both whether they are behind firewalls and whether other users communicating with them are behind firewalls. This tag is represented by "<allfre>" on page four of Exhibit 2. I have described above how the firewall status information is taken into account by the "hide no slot results" code. It is also used in the Morpheus application to assign a "reliability rating" to each file (a rating of expected downloading reliability that is displayed to users through the user interface).

45. *Preventing Deletion of An Auto Download.* The Morpheus source code contains two tags called "Can_Delete" and "Delete_Message". These tags can be set in the auto.xml file. If set in connection with a particular auto-download, then the Morpheus user application will not allow the user application. In other words, setting the "Can_Delete" and "Delete_Message"tags in auto.xml

disables, for that particular file, the user's normal ability to use the Morpheus application's "cancel" feature to terminate a download in progress.

46. *Augmenting Hard-Wired Bootstrapping Servers.* Morpheus comes hard-wired with the addresses of a number of "bootstrapping" servers. These are servers that a Morpheus user application automatically contacts upon its initial launch to learn the Internet addresses of users who are then online. Without learning the Internet addresses of at least one other user already connected to the network, a user cannot initially connect to the network. Through the auto.xml file, MusicCity can augment the list of bootstrap server addresses hard-wired into the source code. Many such server addresses are contained on pages two and three of Exhibit 2. They are encoded but all begin with the tag "<pong>."

47. *Advertisement Refresh Frequency.* Within the Morpheus user application there are advertisement banners. Typically, a company such as MusicCity will earn revenue based on how many "impressions" of a banner ad are displayed or clicked. The ability to control how frequently the banner ads are displayed is an important feature. A tag (<art> or "ad_refresh_time") that has been written into the source code allows MusicCity to adjust the ad refresh rate from the central server.

48. *Auto.xml Update Frequency.* As stated, each Morpheus user application initiates a communication with the start.musiccity.com server upon launch and at regular intervals thereafter. The <xuf> tag ("xml_update_ frequency") enables MusicCity to change the intervals at which these communications occur. MusicCity has used this tag recently to slow the pace of communications from every hour to every 24 hours because, as MusicCity's CTO

testified, the hourly communications were overloading the MusicCity servers.

49. The above auto.xml discussion by no means contains an exhaustive listing of the parameters that MusicCity could control from the auto.xml file is MusicCity so decided. Exhibit 2 includes many additional tags that do not currently appear to be read by the source code. In fact, in the most recent iteration of the source (2.0.1.9) some of the tags described above may no longer be read, while a number of new tags have been introduced. Some of the new tags that are observed in the 2.0.1.9 version of the source code include <hufr> ("hide_unreachable_firewall_results"), <art> ("ad_refresh_time"), <uscnt> ("user_count"), and <usincrt> ("user_increase_rate"). This goes to show that the software is undergoing constant change, and that MusicCity continues to accomplish many changes to the behavior of the Morpheus user application through its modifications to the auto.xml file.

E. MORPHEUS' RELIANCE ON CENTRAL SERVER FACILITIES.

50. I have read Dr. Gribble's opinion that MusicCity could shut down its servers without interfering with the file-searching and trading aspects of Morpheus. In my judgment, permanently cutting off the MusicCity servers and support would certainly result in the degradation of even the file-searching and trading functionality over time. As problems and bugs arose in the software, they would not be corrected. As new versions of user operating systems were released it is not clear that Morpheus could continue to function without alteration. And, of course, MusicCity would not be able to use any of the auto.xml aspects discussed above.

51. In my view, Dr. Gribble's comment also somewhat misses the point. The Morpheus user applications, by design, communicate with a multitude of centralized server facilities

in the normal course of their operation. Some of these servers are owned by MusicCity; others are owned by third parties. Some are necessary for users to initially connect to the network. Some, quite obviously, are essential for the business of MusicCity. Some, as discussed above, play an important role in enabling MusicCity to control its uses. Finally, each of them is necessary for MusicCity to provide Morpheus users with the overall experience they currently enjoy.

52. Each of the following servers is contacted by, or communicates with, the Morpheus user application in the regular and ordinary course of using Morpheus:

a. MusicCity Server – start.musiccity.com. This is actually a cluster of five central servers. In addition to hosting the auto.xml file (and thus being a regular point of communication for every Morpheus user application), the start.musiccity.com server serves all of the web content that fills the Morpheus "home" pages, including the opening screens and the user support pages.

b. MusicCity Server – ads.musiccity.com. Physically the same cluster of servers as start.musiccity.com, ads.musiccity.com is a separate logical server. The Morpheus user application communicates with ads.musiccity.com, which provides the Internet addresses of the third parties which will serve the actual advertising content to fill the advertising banner windows. In addition, the communication with this server allows MusicCity to adjust the advertisement rotation frequency.

c. MusicCity Server – webservice.musiccity.com. The Morpheus user application communicates with webservice.musiccity.com at each launch of the user application and again at various

other times to report back to MusicCity user statistics and other information. For instance, the user application reports back to MusicCity what is referred to as "Advertisement Stats." This consists of the start and stop time of the users last session on Morpheus, and a unique identifier for each user application. This unique identifier is called a GUID (Global Unique Identifier) or SID (Security Identifier). It is generated during the initial installation of Morpheus, and is intended to uniquely identify each particular Morpheus user application, even through reinstallations and upgrades. It allows MusicCity, and any of the third-party applications that may interact with Morpheus, to use a single unique identifier for each Morpheus Application. In addition, the Morpheus user application reports back to webservice.musiccity.com any information provided by the user during the initial user registration process (such as an e-mail address)[2]. Finally, whenever a new or upgraded Morpheus application, including the Media Manager and PalTalk applications, are installed by a Morpheus user, the user's application communicates with webservice.musiccity.com to report back the SHA1 "hash" for that application (basically, the application's unique identifier). In this way, MusicCity can keep track of all new installations of Morpheus and related applications.

d. MusicCity Server – 141.musiccity.com. This server is also identified by its IP address

[2] The most recent version of the Morpheus source code requests that users voluntarily provide additional information, such as name, age group, gender, and country. Morpheus associates this user information with the unique GUID when it reports all this information back to MusciCity's webservice.musiccity.com.

(140.99.15.141). This is the MusicCity server from where users can download auto-upgrades and other prompted downloads. Reference to this server can be seen three times on page one of the auto.xml file attached as Exhibit 2 (the tag is "<url>").

e. Third-Party Host Cache Servers. Whether hard-wired into the source code or added through the auto.xml, Morpheus relies primarily on host cache servers to perform the bootstrapping function that enables users to connect to the network. Of critical importance are the host cache servers whose names are morpheus.gnutellanet.com, connect1.gnutellanet.com, connect2.gnutellanet.com, connect3.gnutellanet.com, connect4.gnutellanet.com, and connect5.gnutellanet.com. There are others that are also used. Without the central host cache servers, Morpheus users would not be able to connect to the network.

f. Third-Party DNS Servers. The host cache server addresses in Morpheus are hard-wired as "domain names" rather than IP addresses. A domain name is a higher-level form of naming on the Internet. Using one of the examples from above, 141.musiccity.com is a domain name; the actual IP address for that server is 140.99.15.141. Domain names need to be "mapped" to the correct IP address. This is done through domain name servers (or DNS servers). This is a very basic Internet function. Before Morpheus user applications can make the required communication with a host cache server, they first have to communicate with a DNS server to map the host cache's domain name to its IP address.

g. Third-Party Ad Content Servers. The Morpheus applications receive the advertising content

that fills their advertising banner windows from third-party ad content servers. The ad content appears to come directly from two different ad servers, Cydoor and Zedo. In the current configuration, these servers are contacted every two minutes to "refresh" the advertising content.

h. Third-Party Commerce Servers. There are at least two central servers involved in the shopping or e-commerce aspects of Morpheus. These are morpheusweb.buyersport.com and morpheusshop.buyersport.com. Both appear to be run by Wurld Media, the company that handled much of the development work for Morpheus 2.0.

53. Dr. Gribble attached as Exhibit 6 to his declaration a depiction of what he referred to as the peer-to-peer aspects of the network. Attached to my declaration as Exhibit 4 is an illustration building on Dr. Gribble's Exhibit 6, but including all of the Morpheus communications with central servers. Looking at the diagram, the two clusters of connected circles represent Gnutella users with a Morpheus user represented by the circle with the M. In the center of the diagram is shown the many central servers with which a Morphues user application communicates during its normal operation, as described above. This diagram clearly shows that Morpheus is not a pure peer-to-peer application. Rather, it is a hybrid that includes peer-to-peer elements and client/server elements..

F. OFFERING OF FILES WITHOUT A USER'S CONSENT.

54. In our experimenting with Morpheus, my colleagues and I observed a very peculiar event. When Morpheus is installed on a computer that already has the Kazaa user application installed, the Morpheus application automatically offers for distribution through Morpheus all files in the

Kazaa "share" folder. This is done without any notice to the user, and certainly without any action on the part of the user.

55. Kazaa has an option whereby the a user who has files in the Kazaa share folder can elect to "Disable sharing of files with other Kazaa users" – meaning none of the files in the user's share folder would be made available for distribution over the Kazaa network. My observation and testing reveals that even if the "disable sharing" option has been selected by the Kazaa user, Morpheus still automatically makes those files available for distribution over the Morpheus system. Thus, even when a user has manifested a desire not to distribute files, Morpheus nevertheless adds the kazaa files to those being offered for distribution through the Morpheus user application.

56. In a very real sense, then, it would be Morpheus (and not the user) who is deciding what files will be offered for distribution.

57. Attached as Exhibit 5 are a series of screen shots that reflect my observations in this regard. In order, they show (a) a Kazaa "My Share Folder" populated with several files, (b) a Kazaa user Options page showing that the option to "Disable sharing of files with other Kazaa users" has been engaged, (c) an empty Morpheus "share" folder which indicates that the Morpheus user has not designated any files for distribution through Morpheus, (d) the Morpheus user applications Media page showing that the files from the Kazaa folder (which were set not to the distributed on Kazaa) are being offered for distribution on Morpheus, and finally (e) a screen shot of the Morpheus user application's Traffic page, showing Kazaa files having been actually distributed through Morpheus.

58. A review of the Morpheus source code has confirmed my observations. Morpheus contains source code that looks for certain specified folders on a user's computer

and, which if it finds them, will automatically offer for distribution all files contained in those folders. The specified folders are for many of the most popular file-trading applications. Thus, in addition to the Kazaa "My Shared Folder," Morpheus will look in a user's hard-drive and automatically offer for distribution files in any BearShare "my downloads" folder, Imesh "my downloads" folder, LimeWire "shared" folder, Gnucleus "downloads" folder, eDonkey2000 "incoming" folder, and Xolox "downloads" folder. This is done without user involvement in selecting any files. And, as my testing with Kazaa has demonstrated, Morpheus offers to distribute the files ***even if the user had taken affirmative steps to disable distribution*** in the other client application.

G. AN ILLUSTRATED P2P FILTERING MECHANISM.

59. There is a new virus filtering mechanism built into the Kazaa 2.0 client application. At this point, it appears to be purely voluntary, in that a user decides whether or not to engage the filter. Nevertheless, it provides a useful real world illustration as to how a copyright filter could be implemented in Morpheus.

60. The Kazaa 2.0 application contacts a central server to obtain (and to regularly update) a database of known virus signatures. When a user has activated the filter, before any of that user's files are offered for distribution to other users, the files are scanned to see if any of them contain a match for one of the known virus signatures in the local database. If a file matches a virus signature, then the file is not shown as available to other users.

61. Because not every client on the FastTrack system engages the virus filter, a user cannot be certain that the files he or she intends to download have been scanned for viruses by the distributing user. Thus, after completing download of

a selected file, that file is also scanned and matched against the database of known virus signature. If it matches, the file is not made accessible to the user.

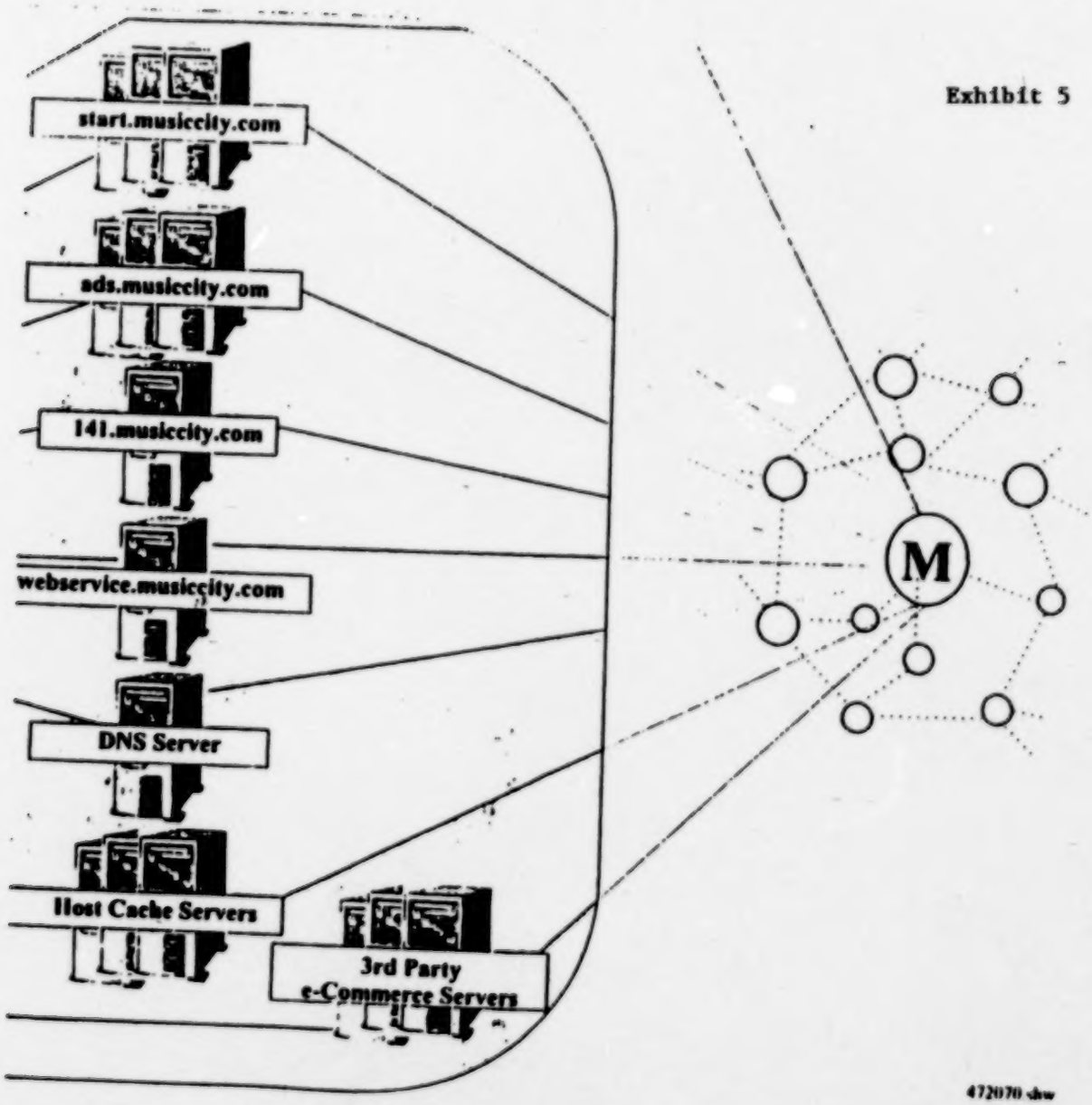
62. The database of virus signatures act much like the "black list" discussed in Professor Kleinrock's declaration. If a file matches the black list, it is not allowed to enter the system. Because the system is an open system in the sense that not all users have the virus filter engaged, the filtering is done on both the offering side and the downloading side. This is very much analogous to the situation with the Gnutella network, where users can connect with client applications other than Morpheus. Even though not all Gnutella user applications may implement a copyright filter, MusicCity can ensure that *its users* neither distribute nor download infringing works by running the filter as Kazaa 2.0 does – at the point of offering and at the point of downloading.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 12th day of October, 2002 in New York, New York.

/s/

Ellis Horowitz, Ph.D

Exhibit 5


start.musiccity.com
ads.musiccity.com
141.musiccity.com
webservice.musiccity.com
DNS Server
Host Cache Servers
3rd Party
e-Commerce Servers
M
472070.dsw

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

METRO-GOLDWYN-MAYER STUDIOS INC., et al., Plaintiffs, v. GROKSTER, LTD., et al., Defendants. [Filed Oct. 15, 2002]	Case No. CV 01 08541 SVW (PJWx) (Consolidated with CV 01 09923 SVW (PJWx))

OPPOSITION DECLARATION OF JACQUELINE C. CHARLESWORTH IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

I, Jacqueline C. Charlesworth, declare as follows:

1. I am an attorney and a member of the Bar of the State of New York. I am Senior Vice President and General Counsel to The Harry Fox Agency, Inc. ("HFA"). I have personal knowledge of the facts contained within this declaration, and, if called upon as a witness, I could and would testify competently, except as to those matters stated expressly on information and belief, which matters I believe to be true. I submit this declaration in support of the Plaintiffs' Memorandum In Opposition to Defendants' Motions for Summary Judgment.

2. I attached certain letters as Exhibits A-D to my Declaration in Support of Plaintiffs' Motion for Summary Judgment. These letters were addressed from me to Andrew P. Bridges, Esq. and Charles S. Baker, Esq., on behalf of StreamCast Networks, Inc., and were sent to the addressees between May 31, 2002 and August 9, 2002. Each letter requested that StreamCast cease and desist from using the

MusicCity System and Service to directly and indirectly cause, contribute to, enable, facilitate, induce, encourage and participate in the infringement of the HFA-affiliated music publishers' copyrighted works, and each enclosed a report demonstrating the availability of a specified number of copyrighted musical works owned or controlled by HFA-affiliated publishers on the MusicCity System and Service.

3. It is my understanding that each of the aforementioned reports provided with the letters identified infringing files that were found in the shared folders of users who were running StreamCast's Morpheus software application. Therefore, it is my understanding that the reports specify only those infringements that were committed by Morpheus users in particular, rather than by other general users of the Gnutella platform.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of October, 2002 at New York, New York.

/s/

JACQUELINE CHARLESWORTH

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

METRO-GOLDWYN-MAYER STUDIOS INC., et al., Plaintiffs, v. GROKSTER, LTD., et al., Defendants. [Filed Oct. 15, 2002]	Case No. CV 01 08541 SVW (PJWx) (Consolidated with CV 01 09923 SVW (PJWx))

OPPOSITION DECLARATION OF CHARLES J. SANDERS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, Charles J. Sanders, declare as follows:

1. I am Senior Vice President of Legal and International Affairs of the National Music Publishers' Association, Inc. ("NMPA"). I submit this declaration in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment.

2. I have previously described NMPA and its licensing affiliate, The Harry Fox Agency, Inc. ("HFA"), in my declaration submitted to this Court in support of Plaintiffs' Motion for Summary Judgment, dated September 9, 2002.

3. This action has been certified as a class action on behalf of HFA music publisher-principals whose copyrighted musical works are being copied and distributed without their permission on defendants' systems and services. HFA acts as an agent for over 27,000 music publishers in licensing the mechanical rights in their musical works – i.e., the making and distribution of phonorecords (including Internet

downloads) that embody those works – on a non-exclusive basis in the United States and its territories.

4. As part of my international affairs responsibilities at NMPA, I have personal knowledge of the licensing practices and policies of licensing authorities in other territories, including The Netherlands. In The Netherlands, musical works are licensed by government authorized organizations called Buma and Stemra. Buma and Stemra are not agencies. Rather, they receive assignments of copyrights from writers and music publishers under Dutch law for exploitation in Buma's and Stemra's authorized territory.

5. Because HFA does not own or control copyrights in musical works, but only acts as an agent for music publishers, it does not have standing to bring infringement actions, which must be brought directly by its principals (as the Leiber plaintiffs have done here). By contrast, Buma and Stemra bring infringement claims directly against unauthorized users of musical works in their authorized territory. As assignees of copyrights under Dutch law, Buma and Stemra bring actions in their own names and on their own behalves in The Netherlands – not as agents for the writers and music publishers from whom they received their assignments.

6. I am advised that Buma/Stemra have asserted copyright infringement counter-claims, in their own names and on their own behalves, in a summary proceeding commenced by Kazaa in The Netherlands. Neither HFA nor, to the best of my knowledge, any of its music publisher-principals, authorized, or participated in any way, in Buma/Stemra's litigation of those counterclaims.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and

correct. Executed this 15th day of October, 2002, at White Plains, New York.

/s/

Charles J. Sanders

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

METRO-GOLDWYN-MAYER STUDIOS INC., et al., Plaintiffs, v. GROKSTER, LTD., et al., Defendants. [Filed Oct. 15, 2002]	Case No. CV 01 08541 SVW (PJWx) (Consolidated with CV 01 09923 SVW (PJWx))

DECLARATION OF PATRICK F. SULLIVAN IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

I, Patrick F. Sullivan, declare as follows:

1. I am the Director of Research and Development at the National Music Publishers' Association, Inc. ("NMPA"). I submit this declaration in support of plaintiffs' opposition to defendants' motions for summary judgment.

2. NMPA is the principal trade association of music publishers in the United States. The over 700 music publisher members of NMPA, their subsidiaries and affiliates, represent the interests of songwriters, and own or control the overwhelming majority of musical compositions available for licensing in the United States. Music publishers are deeply involved in the creative process, from discovering and fostering new songwriters, to promoting the use of songwriters' music. Many of the music publishers

represented by NMPA and its affiliates are wholly owned by individual songwriters who rely for their livelihoods exclusively or primarily on their royalty income from licensing their original musical works. Since it was founded in 1917, NMPA has been involved in legislative, legal, and educational initiatives relating to copyrights on behalf of the common legal interests of music publishers and their songwriters.

3. NMPA's principal responsibilities include representing the interests of music creators and copyright holders before Congress and the courts in matters affecting music copyrights and educating the public on the need for copyright protection in musical works. NMPA participated in the development of the Copyright Act of 1976 and has been intimately involved in the enactment of legislation recognizing and protecting the rights of music copyright holders. NMPA is actively involved in protecting the rights of music copyright holders wherever music is used, including on the Internet.

4. NMPA's licensing affiliate, The Harry Fox Agency, Inc. ("HFA"), is an industry service organization that represents over 27,000 publisher-principals, who in turn represent the interests of more than 160,000 songwriters. Established in 1927 as agent for its publisher-principals, HFA serves as an information source, clearinghouse, and monitoring service for a large percentage of the uses of music in the United States and worldwide. HFA licenses more than 2.5 million copyrighted musical compositions on behalf of its publisher-principals for the manufacture and distribution of CDs, cassette tapes, and phonograph records. In recent years, it has licensed – as agent for its publisher-principals – musical compositions for reproduction and distribution over the Internet as digital phonorecord deliveries or "DPDs." It also acts as licensing agent in licensing copyrighted musical

compositions, on behalf of its publisher-principals, for reproduction in motion pictures, broadcast and cable programs, and commercial advertising. HFA also collects and distributes royalties derived from these licensed uses of copyrighted music and audits licensees on behalf of its publisher-principals.

5. My responsibilities at NMPA include collecting, researching, and analyzing information on new technologies companies for the purpose of developing an ongoing model of the current and emerging business and technological markets, and tracking the emerging modes of distribution of music on the Internet.

6. On September 20, 2002, outside counsel to the Leiber plaintiffs provided me with a list of musical works, which I am informed and believe reflect works available for download on Defendant Grokster's System and Service.

7. I then searched the AS400 database system ("HFA database"), in which all songs HFA licenses are listed, to discern which of the listed titles provided by outside counsel HFA is authorized to license. If the data on the list matched the data for a song in the HFA database, I determined that HFA was authorized to license that work. I determined that HFA is authorized to license 30 of the songs on the list provided by outside counsel. A true and correct list of these 30 songs is attached hereto as Exhibit A. I then printed out the "license detail screens" for the songs that HFA is authorized to license. These printouts include information about the song, publisher, recording artist, and album for each of these works. Attached hereto as Exhibit B are true and correct copies of the "license detail screens" for the 30 songs HFA is authorized to license.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and

correct. Executed this 15th day of October, 2002 at New York, New York.

/s/

PATRICK F. SULLIVAN

Exhibit A To the Declaration of Patrick Sullivan

Song	Artist
9 pm (Till I Come) (9pm Mix)	Atb
Cat Like Thief	Boxcar Racer
Don't Rock My Boat	Bob Marley
Hey, Good Lookin'	Hank Williams
I Will Always Love You	Richard Clayderman
Immature	Bjork
Kerosene	Bad Religion
Les Chantes Magnetiques Part 2	Jean Michel Jarre
Little Silver Ring	The Samples
Mack the Knife	Louis Armstrong
Nervous	Willie Dixon
No Woman, No Cry	Murder 1
Popcorn Love	New Edition
Rockin' Robin	Bobby Day
Seasons in the Sun	Terry Jacks

Stormy Monday	Roomful of Blues
Techno D-Day	Joe Strummer and the Mescaleros
The Ballad of the Green Berets	Sgt. Sadler Barry
The Real Bass (Radio Mix)	Brooklyn Bounce
Then Came You	Euphonic Feat. Kevin Yost
The Way You Look Tonight	D. Fields, J. Kern
This Way	Home Grown
Trench Town Rock	Bob Matley & The Wailers
Trip Away	Jane's Addiction
Turn! Turn! Turn!	Byrds
Veronica	Elvis Costello & Paul McCartney
Whap!	Jack McDuff
While the Blood Runs Warm in My Veins	Aretha Franklin
Will You Love Me Tomorrow	The Shirelles
X Files (The Truth)	Triple X

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

METRO-GOLDWYN-MAYER STUDIOS INC., et al., Plaintiffs, v. GROKSTER, LTD., et al., Defendants. [Filed Oct. 15, 2002]	Case No. CV 01 08541 SVW (PJWx) (Consolidated with CV 01 09923 SVW (PJWx))

DECLARATION OF FRANK CREIGHTON IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, FRANK CREIGHTON, the undersigned, declare:

1. I am Executive Vice President and Director of Anti-Piracy for the Recording Industry Association of America ("RIAA"), where I have been employed for over 17 years. I make this declaration in opposition to Defendants' Motions for Summary Judgment. I know all of the following facts of my own personal knowledge and, if called and sworn as a witness, could and would testify competently thereto.

Download Project

2. I supervised an investigation and analysis for the RIAA in this action regarding the scope of infringing material being offered for distribution and copying on the FastTrack system. In connection therewith, I supervised the analysis of a database consisting of 1,600 files that had been downloaded from the FastTrack system using the Grokster user application (the "Database"). These downloads in the Database were the result of the sampling protocol designed and implemented by, and more fully described in, the accompanying Declaration of Dr. Ingram Olkin, Professor of

Statistics and Education at Stanford University. Briefly described, the Database consists of a sample of actual files that FastTrack users offered for copying that were downloaded using the Grokster application for the purposes of this project. A list of the 1,600 files thus downloaded is included on Exhibit 1 to this Declaration. (Column A of Exhibit 1 numbers the downloads in order, Column B lists the actual filenames of the files, and Column C categorizes the files as described hereafter.) It is my understanding that Defendants have been, or will be, provided with copies of those downloaded files.

3. Persons working under my supervision, and in conjunction with teams working with Elissa Hecker of the Harry Fox Agency ("HFA") (*see* accompanying Declaration of Elissa Hecker ("Hecker Declaration")), Patrick F. Sullivan of the National Music Publishers Association ("NMPA") (*see* accompanying Declaration of Patrick F. Sullivan ("Sullivan Declaration")) and Gordon A. Shock of Williams & Connolly LLP on behalf of the Motion Picture Association of America ("MPAA")) (*see* accompanying Declaration of Gordon A. Shock ("Shock Declaration")), analyzed the Database to determine the percentage of infringing files being made available for copying by others.

4. In the course of performing our duties for the RIAA, we regularly employ and rely on a variety of source material to determine copyright ownership. These include both print publications and reliable Internet databases that report corporate affiliations, exclusive distribution rights, and copyright ownership. We also consult additional commonly used Internet sources to gain supplemental information relating to new releases and ownership thereof. Additionally, we have begun to engage the services of content management and information services companies that employ media identification and classification technology, and which have

reference databases of copyrighted music. In this particular instance, we used Audible Magic Corporation's file identification technology to assist in analyzing the Database. (Audible Magic's file identification technology is described in the Declaration of Vance Ikezoye, filed in support of Plaintiffs' September 9, 2002, motion for summary judgment on liability.) Between the analysis using the Audible Magic technology and the analysis done by my team, each of the files that has been identified as infringing has been confirmed to be an authentic version of the original.

5. We were able conclusively to confirm that at least 1201 files, or 75% of the files in the Database, are owned or controlled by the Plaintiffs (including their affiliates) in this action and infringe their rights in either the sound recording, the musical composition, or both, or the copyrights in a motion picture or video – that is, those works were not authorized for distribution and copying on Defendants' systems by Plaintiffs. The RIAA has specifically confirmed that each file on the attached Exhibit 2 is owned by a Record Company Plaintiff (including affiliates) and has not been authorized for distribution on Defendants' system. Collectively, the various teams were able to confirm as infringing those files in the Database containing (a) the sound recordings and other copyrighted content owned by the Record Company Plaintiffs in this action as listed in Exhibit 2 to this Declaration; (b) the musical compositions listed in Exhibit A to the Hecker Declaration; (c) the musical compositions listed in Exhibit A to the Sullivan Declaration; and (d) the motion picture and other video content referred to in the Shock Declaration. Taken together, all of the files that fall into this category – confirmed infringing works owned or controlled by Plaintiffs – are identified by the numeral "1" in Column "C" on Exhibit 1 to this Declaration.

6. In my opinion and based upon my experience, an additional 234 files, or 15% of the files in the Database, consist of material that is very likely copyrighted and being distributed and copied without the authority of rights holder. That is the case because such files consist of commercially released sound recordings – including sound recordings owned by RIAA member companies who are not Plaintiffs (or affiliates) in this action – compositions, videos, and the like. All of the files that fall into this category – very likely infringing – are identified by the numeral "2" in Column "C" on Exhibit 1 to this Declaration. ***Together, the known or very likely to be infringing works account for 1435 files, or almost 90% of the files in the Database.***

7. For 161 files, or 10% of the files in the Database, there was not enough information to form reasonable conclusions either as to what those files even consisted of, and/or whether they were infringing or non-infringing. These files included such things as snippets of software, a picture of Bob Marley playing soccer and a document concerning someone's divorce. All the files that fall into this category – insufficient information concerning infringement – are identified by the numeral "3" in Column "C" on Exhibit 1 to this Declaration.

8. None – 0% – of the files in the Database consisted of the 187 materials that Defendants specifically identified as "public domain works" in the declarations they submitted in support of their first motion for summary judgment, and again in their second motion. I described an earlier largely unsuccessful attempt to locate these works in paragraphs 22 to 25 my September 9, 2002, Declaration filed in support of Plaintiffs' motion for summary judgment on liability ("September 9, 2002, Declaration").

9. Four files, or ¼ % of the files in the Database, appear to consist of "looped" music files – files where the first

several seconds of a sound recording are repeated over and over again. All the files that fall into this category are identified by the numeral "4" in Column "C" on Exhibit 1 to this Declaration.

Morpheus Downloads and Notices of Infringement

10. As discussed in Paragraphs 27-28 of my September 9, 2002, Declaration, between August 25, 2002, and September 9, 2002, a team under my direction and supervision located on the MusicCity system every recording in the Billboard "Hot 100" listed in the August 25, 2002 issue; The Top 10 Recordings as listed in every issue of the Billboard "Hot 100" for every week between August 25, 2001 and August 25, 2002; and at least one recording from every album ever certified Diamond® by the RIAA.

11. These recordings were specifically located on the MusicCity system. I know this to be true because when a user downloads recordings from the MusicCity system, metadata is displayed from that file indicating on which system that file is available. For example, the metadata designations "MMMM" and "MRPH" refer to the MusicCity system. These metadata designations are displayed in certain Gnutella-based user interfaces (although not MusicCity's Morpheus interface). By using interfaces that reveal such metadata, each of the files described in Paragraph 10 of this Declaration were indeed confirmed as having been made available from a Morpheus user and through the MusicCity system.

12. In addition, after MusicCity modified its system to be based on a Gnutella, rather than a FastTrack, protocol, I continued to send notices of infringement to MusicCity, informing it of infringing works being made available for copying and distribution on MusicCity's Gnutella-based system. Again, by reference to the metadata, all of those files were located in the "share" folders of users running

MusicCity's Morpheus user application. Those notices of infringement consisted of the April 3, June 21, July 8, August 15, August 22, and September 9, 2002, notices that I described in paragraph 19 of my September 9, 2002, Declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on October 14, 2002, at Washington, DC.

/s/

Frank Creighton

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

METRO-GOLDWYN-MAYER STUDIOS INC., et al., Plaintiffs, v. GROKSTER, LTD., et al., Defendants. [Filed Oct. 15, 2002]	Case No. CV 01 08541 SVW (PJWx) (Consolidated with CV 01 09923 SVW (PJWx))

DECLARATION OF ELISSA D. HECKER IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

I, Elissa D. Hecker, declare as follows:

1. I am a member of the Bar of the State of New York. I am Associate Counsel at The Harry Fox Agency, Inc. ("HFA"). I have personal knowledge of the facts contained within this declaration, and, if called upon as a witness, I could and would testify competently, except for those matters stated expressly on information and belief, which matters I believe to be true. I submit this declaration in support of plaintiffs' opposition to defendants' motions for summary judgment.

2. HFA is a wholly owned subsidiary of National Music Publishers' Association, Inc. Established in 1927, HFA serves as agent on behalf of its 27,000 music publisher-principals in licensing copyrighted musical compositions for reproduction and distribution as physical phonorecords (CDs, cassette tapes, and phonograph records), and over the Internet as digital phonorecord deliveries.

3. By appointing HFA as their common licensing collection agent, the named plaintiffs and other class members in *Leiber, et. al v. Consumer Empowerment BV, et. al*, Case No. CV 01-09923-SVW (PJWx), have confirmed their inter/ in generating royalties by licensing their copyrighted musical works.

4. I supervised an investigation in this action regarding the scope of infringing material being offered for distribution and copying on the FastTrack network through the Grokster System and Service. In connection therewith, I supervised the analysis of a list consisting of 1,600 files that was provided to me by outside counsel to the *Leiber* plaintiffs. I am informed and believe that this list represents files that were available for download on Defendant Grokster's System and Service.

5. One person working under my supervision analyzed the HFA database to determine the files from the list provided by outside counsel that are licensed through HFA. First, non-MP3 files, which cannot have been licensed by HFA because they are not songs, were excised from the list of 1,600 entries. The song titles for the remaining 1,462 entries on the list were checked against HFA's AS400 database system ("HFA database"), in which all songs HFA licenses are listed.

6. We were able conclusively to confirm and document that a substantial number of the files listed on the original list of 1,600 provided by outside counsel matched songs listed in HFA's database. A spreadsheet reflecting those works on the original list of 1,600 songs that matched songs in the HFA database is attached hereto as Exhibit A. This spreadsheet contains the song titles, artist names, and the names of the publishers on whose behalf HFA licenses the songs. On information and belief, none of HFA's publisher-principals

have authorized their copyrighted works to be made available for download on Defendant Grokster's System and Service.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on October 11th, 2002, in New York, New York.

/s/

Elissa D. Hecker

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
112	112	EMI - APRIL MUSIC
311	I'LL BE HERE AWHILE	IRVING MUSIC, INC
2 LIVE CREW	ME SO HORNEY	UNIVERSAL-MCA MUSIC PUBLISHING
NIKKI FRENCH	TOTAL ECLIPSE OF THE HEART	EDWARD B. MARKS MUSIC
A PERFECT CIRCLE	JUDITH	EMI - APRIL MUSIC
AALIYAH	ARE YOU THAT SOMEBODY	WB MUSIC CORP.
		EMI - APRIL MUSIC
AALIYAH	TRY AGAIN	WB MUSIC CORP.
		EMI - APRIL MUSIC
AARON TIPPIN	I WOULDN'T HAVE IT ANY OTHER WAY	ACUFF-ROSE MUSIC
		MUSIC SALES CORP.
ADAM ANT	WONDERFUL	COLGEMS - EMI MUSIC INC
		WARNER - TAMERLANE MUSIC CORP
AEROSMITH	CRYIN'	UNIVERSAL-MCA MUSIC PUBLISHING
		EMI - APRIL MUSIC
AGENT ORANGE	GET SMART THEME	EDWARD B. MARKS MUSIC
ALICE COOPER	KILLER	SIX PALMS MUSIC
ALICIA KEYS	A WOMAN'S WORTH	EMI - APRIL MUSIC

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
ALISON KRAUS	WHEN YOU SAY NOTHING AT ALL	SCREEN GEMS - EMI MUSIC INC
		UNIVERSAL-MCA MUSIC PUBLISHING
ALL SAINTS	NEVER E'/ER	BMG SONGS, INC
		UNIVERSAL-MCA MUSIC PUBLISHING
AMERICA	VENTURA HIGHWAY	WARNER BROS. MUSIC CO.
ANASTACIA	I'M OUTTA LOVE	UNIVERSAL MUSIC GROUP
		EMI - APRIL MUSIC
		SONY/ATV TUNES LLC
ANASTACIA	PAID MY DUES	UNIVERSAL-MCA MUSIC PUBLISHING
		WB MUSIC CORP.
		WARNER - TAMERLANE MUSIC CORP
ARETHA FRANKLIN	RESPECT	IRVING MUSIC, INC
AVRIL LAVIGNE	NOBODY'S FOOL	ALMO MUSIC CORP.
		WARNER - TAMERLANE MUSIC CORP
AVRIL LAVIGNE	THINGS I'LL NEVER SAY	ALMO MUSIC CORP.
		WARNER - TAMERLANE MUSIC CORP
		WB MUSIC CORP.
B2K	HERE I GO AGAIN	EMI - APRIL MUSIC

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
BADFINGER	DAY AFTER DAY	WB MUSIC CORP.
BAND AID	DO THEY KNOW IT'S CHRISTMAS	CHAPPELL & CO.
BANDA EVA	VEM MEU AMOR	PEERMUSIC, LTD
BANGLES	ETERNAL FLAME	SONGS OF UNIVERSAL MUSIC PUB.
		SONY/ATV TUNES LLC
BARBARA STREISAND	WOMAN IN LOVE	CAREERS - BMG MUSIC PUB
BARE NAKED LADIES	OLD APARTMENT	WB MUSIC CORP.
BARRY MANILOW	I WRITE THE SONGS	BMG SONGS, INC
BASEMENT JAXX	I WANT YOU	UNIVERSAL-MCA MUSIC PUBLISHING
BEACH BOYS	BARBARA ANN	EMI-LONGITUDE MUSIC CO
		COUSINS MUSIC
BEACH BOYS	LITTLE DEUCE COUPE	IRVING MUSIC, INC
		CAREERS - BMG MUSIC PUB
BEASTIE BOYS	INTERGALACTIC PLANETARY	UNIVERSAL-POLYGRAM INTL PUB.
BEASTIE BOYS	NO SLEEP TIL BROOKLYN	WB MUSIC CORP.
		UNIVERSAL-POLYGRAM INTL PUB.
BEATLES	BLACKBIRD	SONY/ATV TUNES LLC
		EMI-BLACKWOOD

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
BEATLES	COME TOGETHER	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	EIGHT DAYS A WEEK	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	ELEANOR RIGBY	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	IMAGINE ALL THE PEOPLE	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	I'VE GOT A FEELING	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	LET IT BE	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	LOVELY RITA	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	MICHELLE	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	RUN FOR YOUR LIFE	SONY/ATV TUNES LLC
		EMI-BLACKWOOD

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
BEATLES	STRAWBERRY FIELDS	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEATLES	WHEN I'M 64	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BEE GEES	SATURDAY NIGHT FEVER	UNIVERSAL-MCA MUSIC PUBLISHING
BELA FLECK AND THE FLECKTONES	FLIGHT OF THE COSMIC HIPPO	BUG MUSIC
BEN HARPER	BURN ONE DOWN	EMI-VIRGIN MUSIC, INC.
BEN HARPER	BURN TO SHINE	EMI-VIRGIN MUSIC, INC.
BEN HARPER	MAMA'S TRIPPIN	EMI-VIRGIN MUSIC, INC.
BESSIE SMITH	SUMMERTIME	WB MUSIC CORP.
BETTE MIDLER	THE WIND BENEATH MY WINGS	WARNER HOUSE OF MUSIC
		WB GOLD MUSIC CORP
BEWITCHED	JESSE HOLD ON	UNIVERSAL - SONGS OF POLYGRAM
		BMG SONGS, INC
		DAVID PLATZ MUSIC INC
		WB MUSIC CORP.
BIF NAKED	WE'RE NOT GONNA TAKE IT	ZOMBA MELODIES INC.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
BIG DUMB FACE	VOICES IN THE WALL	ZOMBA ENTERPRISES, INC.
BIG PUN	STILL NOT A PLAYER	ALMO MUSIC CORP.
		FORAY MUSIC
		EMI-BLACKWOOD
		EMI - APRIL MUSIC
		ZOMBA ENTERPRISES, INC.
BILLIE HOLIDAY	AUTUMN IN NEW YORK	WARNER BROS. MUSIC CO.
BILLIE HOLIDAY	IT HAD TO BE YOU	SONGWRITERS GUILD OF AMERICA
BILLIE MYERS	KISS THE RAIN	UNIVERSAL-POLYGRAM INTL PUB.
		WB MUSIC CORP.
		EMI-BLACKWOOD
BILLY IDOL	EYES WITHOUT A FACE	WB MUSIC CORP.
BIZZY BONE	DEMONS SURROUND ME	WB MUSIC CORP.
BLACK ROB	WHOA	EMI - APRIL MUSIC
		BMG SONGS, INC
BLACK SABBATH	FLUFF	ESSEX MUSIC INTERNATIONAL, INC.
BLACK SABBATH	PARANOID	ESSEX MUSIC INTERNATIONAL, INC.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
BLACKHAWK	GOODBYE SAYS IT ALL	BMG SONGS, INC
		EMI - APRIL MUSIC
BLANK AND JONES	BEYOND TIME	BMG SONGS, INC
BLESSED UNION OF SOULS	I BELIEVE	EMI - APRIL MUSIC
		SHAPIRO BERNSTEIN
BLIND MELLON	SKINNED	EMI - APRIL MUSIC
BLINK 182	ADAMS SONG	EMI - APRIL MUSIC
BLINK 182	ALL THE SMALL THINGS	EMI - APRIL MUSIC
BLINK 182	TIME TO BREAK UP	EMI - APRIL MUSIC
BLINK 182	FIRST DATE	EMI - APRIL MUSIC
BLUES TRAVELER	HOOK	IRVING MUSIC, INC
BOB DYLAN	CHIMES OF FREEDOM	WARNER BROS. MUSIC CO.
BOB MARLEY	DREAMLAND	IRVING MUSIC, INC
BOB MARLEY	MAN TO MAN	IRVING MUSIC, INC
BOB MARLEY	ROOTS, ROCK, REGAE	UNIVERSAL-POLYGRAM INTL PUB.
BON JOVI	IT'S MY LIFE	UNIVERSAL-POLYGRAM INTL PUB.
		ZOMBA ENTERPRISES, INC.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
BON JOVI	PLEASE COME HOME FOR CHRISTMAS	FORT KNOX MUSIC, INC.
		TRIO MUSIC CO.
BOXCAR RACER	SORROW	EMI - APRIL MUSIC
BOYS 2 MEN	END OF THE ROAD	SONY/ATV SONGS LLC
		WARNER - TAMERLANE MUSIC CORP
		ENSIGN MUSIC CORP.
BOYS 2 MEN	YESTERDAY	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
BOYS 2 MEN & MARIAH CARREY	ONE SWEET DAY	SONY/ATV SONGS LLC
		SONY/ATV TUNES LLC
		ENSIGN MUSIC CORP.
BOYZ 2 MEN	WATER RUNS DRY	SONY/ATV TUNES LLC
BRANDY	WHAT ABOUT US	EMI-BLACKWOOD
		EMI - APRIL MUSIC
		SONGS OF WINDSWEPT PACIFIC
		NOTTING HILL MUSIC INC.
	BRAVEHEART THEME	FAMOUS MUSIC CORP.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
BREAD	DIARY	SONY/ATV TUNES LLC
BRITNEY SPEARS	LUCKY	UNIVERSAL-MCA MUSIC PUBLISHING
		ZOMBA ENTERPRISES, INC.
BRITNEY SPEARS	OVERPROTECTED	ZOMBA ENTERPRISES, INC.
BRITNEY SPEARS	WHAT YOU SEE IS WHAT YOU GET	CAREERS - BMG MUSIC PUB
		ZOMBA ENTERPRISES, INC.
BRITYNEY SPEARS	BOYS	EMI-BLACKWOOD
BRYAN ADAMS	SUMMER OF 69	IRVING MUSIC, INC
BURCE HORNSBY	MANDOLIN RAIN	WB MUSIC CORP.
BURT BACHARACH	I'LL NEVER ALL IN LOVE AGAIN	WB MUSIC CORP.
		CASA DAVID
BUSH	GLYCERINE	ENSIGN MUSIC CORP.
BUSTA RHYMES	WOO HA	WARNER - TAMERLANE MUSIC CORP
		EMI-BLACKWOOD
CHICANE	OFFSHORE	UNIVERSAL-MCA MUSIC PUBLISHING
CAKE	SHORT SKIRT, LONG JACKET	EMI-BLACKWOOD
CAMEO	WORD UP	UNIVERSAL - SONGS OF POLYGRAM
		UNIVERSAL-POLYGRAM INTL PUB.

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Artist	**Song Title**	**Publisher**
CAPONE N NOREAGA	CAPONE BONE	JOBETE MUSIC CO EMI - APRIL MUSIC SUITE 1202 MUSIC
CARPENTERS	BLESS THE BEASTS AND CHILDREN	SCREEN GEMS - EMI MUSIC INC
CARS	JUST WHAT I NEEDED	UNIVERSAL-MCA MUSIC PUBLISHING
CAT STEVENS	WILD WORLD	SONY/ATV TUNES LLC
CECE PENISTON	FINALLY	UNIVERSAL - SONGS OF POLYGRAM
CELINE DION	ALL BY MYSELF	UNIVERSAL - SONGS OF POLYGRAM
CELINE DION	PRAYER	WARNER - TAMERLANE MUSIC CORP
CELINE DION	THEN YOU LOOK AT ME	TOUCHTONE PICTURES MUSIC AND SONGS, INC IRVING MUSIC, INC BUENA VISTA MUSIC PUB. CO. SONY/ATV TUNES LLC
CHAING FACES	SAME TEMPO	SONGS OF UNIVERSAL MUSIC PUB. WB MUSIC CORP.
CHANGING FACES	STROKE YOU UP	ZOMBA ENTERPRISES, INC.
CHARLIE DANIELS BAND	THE DEVIL WENT DOWN TO GEORGIA	SONGS OF UNIVERSAL MUSIC PUB.

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Artist	**Song Title**	**Publisher**
CHARLIE RICH	BEHIND CLOSED DOORS	WARNER HOUSE OF MUSIC
CHELY WRIGHT	NEVER LOVE YOU ENOUGH	SONY/ATV TUNES LLC
		UNIVERSAL-POLYGRAM INTL PUB.
CHRIS CAGLE	I BREATHE IN, I BREATHE OUT	TEN TEN TUNES
		SONY/ATV TUNES LLC
CHRIS DUARTE	MY WAY DOWN	ZOMBA ENTERPRISES, INC.
COLLECTIVE SOUL	GEL	WARNER - TAMERLANE MUSIC CORP
COLLECTIVE SOUL	WHERE THE RIVER FLOWS	WARNER - TAMERLANE MUSIC CORP
COLLECTIVE SOUL	SHE LIKES ATTENTION	MUSIC ENTERPRISES INC.
CONFIDENTIAL	IT REALLY DON'T MATTTER	SONY/ATV SONGS LLC
CRASH TEST DUMMIES	SUPERMAN'S SONG	UNIVERSAL-POLYGRAM INTL PUB.
CREAM	SUNSHINE OF YOUR LOVE	CHAPPELL & CO.
		UNICHAPPELL MUSIC
CREED	HIGER	CAREERS - BMG MUSIC PUB
		WB MUSIC CORP.
CROSBY STILLS NASH AND YOUNG	JUST A SONG BEFORE I GO	SONY/ATV SONGS LLC

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Artist	**Song Title**	**Publisher**
CROSBY STILLS, NASH AND YOUNG	SOUTHERN CROSS	ALMO MUSIC CORP.
		THREE WISE BOYS MUSIC LLC
CY COLEMAN	PLAYBOY'S THEME	WB MUSIC CORP.
CYPRESS HILL	ROCK SUPERSTAR	BMG SONGS, INC
CYPRESS HILL	TEQUILA SUNRISE	BMG SONGS, INC
DAFT PUNK	REVOLUTION 909	ZOMBA ENTERPRISES, INC.
DANGELO, AZ, DJ PREMIER	LADY	UNIVERSAL-POLYGRAM INTL PUB.
DAVE MASON	WE JUST DISAGREE	EMI-BLACKWOOD
DAVE MATTHEWS BAND	THE SPACE BETWEEN US	UNIVERSAL-MCA MUSIC PUBLISHING
DEAD KENNEDYS	NIGHT OF THE LIVING REDNECKS	BUG MUSIC
DEANA CARTER	COUNT ME IN	EMI - APRIL MUSIC
DEANA CARTER	STRAWBERRY WINE	EMI-LONGITUDE MUSIC CO
		SONGS OF UNIVERSAL MUSIC PUB.
DELERIUM FEATURING SRAH MCLACHLAN	SILENCE	SONY/ATV SONGS LLC

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Artist	**Song Title**	**Publisher**
DEPECHE MODE	BEHIND THE WHEEL	EMI-BLACKWOOD
DEPECHE MODE	ENJOY THE SILENCE	EMI-BLACKWOOD
DEPECHE MODE	FREELOVE	EMI-BLACKWOOD
DEPECHE MODE	PLEASURE, LITTLE TREASURE	EMI-BLACKWOOD
DESTINY'S CHILD	BOOTYLICIOUS	SONY/ATV TUNES LLC
		EMI - APRIL MUSIC
DEXTER GORDEN	TENOR MADNESS	PRESTIGE MUSIC
DIANA KRALL	PEEL ME A GRAPE	KOLOW MUSIC, INC.
DIDO	HERE WITH ME	TCF MUSIC PUBLISHING
DIOMEDES DIAZ	EL CONDOR HERIDO	EMI SONGS LATINO
DISTURBED	STUPIFY	WB MUSIC CORP.
DMX	WHAT THESE BITCHES WANT	EMI - APRIL MUSIC
		UNIVERSAL MUSIC CORP.
DOBBIE BROTHERS	BLACK WATER	WB MUSIC CORP.
DON MCLEAN	AMERICAN PIE	SONGS OF UNIVERSAL MUSIC PUB.
DOOBIE BROTHERS	CHINA GROVE	WARNER - TAMERLANE MUSIC CORP

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Artist	**Song Title**	**Publisher**
DR. DRE	THE NEXT EPISODE	BEECHWOOD MUSIC CORP. EMI-BLACKWOOD WB MUSIC CORP.
DR. DRE	STILL D. R. E.	W.B.M. CORP. EMI-BLACKWOO
DR. EVIL	HARD KNOCK LIFE	HELENE BLUE MUSIQUE, LTD EDWIN H. MORRIS & CO. EMI-BLACKWOOD WB MUSIC CORP.
DREAM THEATRE	PULL ME UNDER	WB MUSIC CORP.
DROPKICK MURPHEYS	CADENCE TO ARMS	UNIVERSAL MUSIC CORP.
DRU HILL	IN MY BED	WARNER - TAMERLANE MUSIC CORP ZOMBA ENTERPRISES, INC. SONGS OF THE WINDSWEPT PACIFIC
DRY KILL LOGIC	ASSFAULT	EMI - APRIL MUSIC
DUNCAN SHEIK	THAT SAYS IT ALL	CAREERS - BMG MUSIC PUB
DUSTY SPRINGFIELD	SON OF A PREACHER MAN	WB MUSIC CORP.

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Artist	**Song Title**	**Publisher**
EDWIN MCCAIN & JEWEL	WHAT MATTERS	EMI - APRIL MUSIC
ELTON JOHN	SAD SONGS (SAY SO MUCH)	WB MUSIC CORP.
ELTON JOHN	TINY DANCER	UNIVERSAL - SONGS OF POLYGRAM
ELVIS COSTELLO & PAUL MCCARTNEY	VERONICA	BMG SONGS, INC.
		MPL COMMUNICATIONS, INC.
EMERSON DRIVE	I SHOULD BE SLEEPING	EMI - APRIL MUSIC
		EMI-BLACKWOOD
EMINEM	BAD MEETS EVIL	ENSIGN MUSIC CORP.
EMINEM	SAY WHAT YOU SAY	MUSIC OF WINDSWEPT PACIFIC
EMINEM	MY NAME IS (THE REAL SLIM SHADY)	BUG MUSIC
		ENSIGN MUSIC CORP.
		WB MUSIC CORP.
		MUSIC OF WINDSWEPT PACIFIC
EMMY LOU HARRIS	DIDN'T LEAVE NOBODY BYUT THE BABY	BUG MUSIC
		IRVING MUSIC, INC

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Artist	**Song Title**	**Publisher**
ENANITOS VERDES	TE VI EN UN TREN	BMG SONGS, INC.
		SADAIC LATIN COPYRIGHTS
ENCHANTMENT	WHERE DO WE GO FROME HERE	712 STONE AVENUE MUSIC
		SKYTOWER MUSIC, LTD
ENIGMA	PRINCIPLES OF LUST	GEMA
ENYA	ONLY TIME	EMI-BLACKWOOD
ERASURE	CHAINS OF LOVE	SONY/ATV TUNES LLC
ERIC CLAPTON	TEARS IN HEAVEN	UNICHAPPELL MUSIC
		IRVING MUSIC, INC
ERIC CLAPTON	MODERN GIRL	UNICHAPPELL MUSIC
ERIC GLAES BAND	SIGN OF THE STORM	SONGS OF UNIVERSAL MUSIC PUB.
		UNIVERSAL-POLYGRAM INTL PUB.
ETTA JAMES	DON'T CRY BABY	WARNER BROS. MUSIC
ETTA JAMES	FOOL THAT I AM	ANNE-RACHEL MUSIC
FABULOUS THUNDERBIRDS	ROCK THIS PLACE	CAREERS - BMG MUSIC PUB
		UNIVERSAL - SONGS OF POLYGRAM
FAITH EVANS	I LOVE YOU	BMG SONGS, INC.

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Artist	**Song Title**	**Publisher**
FAITH HILL	THIS KISS	WARNER - TAMERLANE MUSIC CORP
		ALMO MUSIC CORP.
FAITH HILL	IT'S YOUR LOVE	EMI-BLACKWOOD
FAITH HILL	LETS MAKE LOVE	CHERRY RIVER MUSIC CO.
		CAREERS - BMG MUSIC PUB
		WARNER - TAMERLANE MUSIC CORP
FAT JOE	MISERY NEEDS COMPANY	WARNER - TAMERLANE MUSIC CORP
FILTER	TAKE A PICTURE	EMI - APRIL MUSIC
FLEETWOOD MAC	COME A LITTLE BIT CLOSER	CAREERS - BMG MUSIC PUB
FLEETWOOD MAC	I DON'T WANT TO KNOW	SONY/ATV SONGS LLC
FOCUS	HOCUS POCUS	RADMUS PUBLISHING
FOO FIGHTERS	LEARN TO FLY	EMI-VIRGIN SONGS
		UNIVERSAL MUSIC CORP.
FOO FIGHTERS	MY HERO	BUG MUSIC
		EMI-VIRGIN SONGS
FRANK SINATRA	NEW YORK, NEW YORK	WARNER BROS. MUSIC
FRANKIE VALLIE AND THE FOUR SEASONS	BIG GIRLS DON'T CRY	CLARIDGE MUSIC CO

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Artist	**Song Title**	**Publisher**
FRANKIE VALLIE AND THE FOUR SEASONS	DAWN (GO AWAY)	GAVADIMA MUSIC
		EMI-LONGITUDE MUSIC CO
FRANKIE VALLIE AND THE FOUR SEASONS	OUR DAY WILL COME	UNIVERSAL-MCA MUSIC PUBLISHING
		BETTER HALF MUSIC CO.
FUNK DOOBIEST	BOW WOW WOW	BMG SONGS, INC.
		UNIVERSAL-MCA MUSIC PUBLISHING
GARTH BROOKS	RIVER	BMG SONGS, INC.
		MID-SUMMER MUSIC, INC
GARTH BROOKS	WRAPPED UP IN YOU	WARNER - TAMERLANE MUSIC CORP
GBONE THUGS N HARMONY	THA CROSSROADS	EMI - APRIL MUSIC
GEORGE GERSHWIN	SOMEONE TO WATCH OVER ME	WB MUSIC CORP.
GEORGE HARRISON	MY SWEET LORD	HARRISONGS, LTD
GEORGE STRAIT	YOU LOOK SO GOOD IN LOVE	CHAPPELL & CO.
		UNIVERSAL-MCA MUSIC PUBLISHING
		UNIVERSAL - SONGS OF POLYGRAM

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Artist	**Song Title**	**Publisher**
GEORGE THOROUGHGOOD	MOVE IT ON OVER	ACUFF-ROSE MUSIC
		RIGHTSONG MUSIC, INC.
GEORGE THOROUGHGOOD	WILLIE AND THE HAND JIVE	BUG MUSIC
GINUWINE	DIFFERENCES	MUSIC OF WINDSWEPT PACIFIC
		SONY/ATV TUNES LLC
GLEN MILLER	IN THE MOOD	SHAPIRO BERNSTEIN
GLEN MILLER	STRING OF PEARLS	CHAPPELL & CO.
GLORIA GAYNOR	I WILL SURVIVE	UNIVERSAL-POLYGRAM INTL PUB.
GODSPELL	WE BESEECH THEE	RANGE ROAD MUSIC, INC
		QUARTET MUSIC, INC.
		NEW CADENZA MUSIC CORP.
GOO GOO DOLLS	IRIS	EMI-VIRGIN SONGS
GOOD CHARLOTTE	MOTIVATION PROCLAMATION	EMI - APRIL MUSIC
GOOD CHARLOTTE	THE CLICK	EMI - APRIL MUSIC
GREEN DAY	BIG YELLOW TAXI	SONY/ATV TUNES LLC
GREEN DAY	HITCHIN' A RIDE	WARNER BROS. MUSIC CO.

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Artist	**Song Title**	**Publisher**
GREEN DAY	TIME OF YOUR LIFE	WARNER BROS. MUSIC CO.
GROOVE HOLMES	THE WAILER	WARNER - TAMERLANE MUSIC CORP
GUESS WHO	SHAKIN ALL OVER	EMI MILLS MUSIC
GUSTAVO CERATI	TE LLEVO PARA QUE ME LLEVES	SADAIC LATIN COPYRIGHTS
HALL AND OATES	ONE ON ONE	UNICHAPPELL MUSIC
HARRY BELAFONTE	BANANA BOAT	CHERRY LANE MUSIC PUB. CO.
HARRY CONNICK, RR	IT HAD TO BE YOU	SONGWRITERS GUILD OF AMERICA
HARRY FORSTER CHAPIN	MR TANNER	WB MUSIC CORP.
HATEBREED	PURITAN	PAPER JAM MUSIC, INC
HAWKWIND	INTERSTELLAR OVERDRIVE	ESSEX MUSIC INTERNATIONAL, INC.
HEATWAVE	ALWAYS AND FOREVER	ALMO MUSIC CORP.
HEB ALPERT	WHIPPED CREAM	SCREEN GEMS - EMI MUSIC INC
HERE'S BEN HARPER	THE WOMAN IN YOU	EMI-BLACKWOOD
HOOBASTANK	CRAWLING IN THE DARK	WB MUSIC CORP.
HOOTERS	AND WE DANCE	WB MUSIC CORP.
HUEY LEWIS AND THE NEWS	THE POWER OF LOVE	WB MUSIC CORP.

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Artist	**Song Title**	**Publisher**
INCUBUS	HAVE YOU EVER	EMI - APRIL MUSIC
INCUBUS	I MISS YOU	EMI - APRIL MUSIC
INCUBUS	WARNING	EMI - APRIL MUSIC
INCUBUS	WISH YOU WERE HERE	EMI - APRIL MUSIC
INDIGO GIRLS	CLOSER TO FINE	EMI-VIRGIN SONGS
INSANE CLOWN POSSE	THE SHAGGY SHOW	ZOMBA ENTERPRISES, INC.
INXS	DEVIL INSIDE	WB MUSIC CORP.
ISLEY BROTHERS	CONTAGIOUS	ZOMBA ENTERPRISES, INC.
JA RULE	ALWAYS ON TIME	FAMOUS MUSIC CORP.
		ENSIGN MUSIC CORP.
		SONGS OF UNIVERSAL MUSIC PUB.
JA RULE	E DUB & JA	ENSIGN MUSIC CORP.
		ZOMBA ENTERPRISES, INC.
JA RULE	PUT IT ON ME	ENSIGN MUSIC CORP.
		FAMOUS MUSIC CORP.
JACKSON FIVE	ABC	JOBETE MUSIC CO.
JAGGED EDGE	CUT SOMETHING	EMI - APRIL MUSIC

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Artist	**Song Title**	**Publisher**
JAGGED EDGE	LETS GET MARRIED	EMI - APRIL MUSIC
JAGGED EDGE	WHERE THE PARTY AT	W.B.M. MUSIC CORP
JAMES TAYLOR	FIRE AND RAIN	WB MUSIC CORP.
JAMIROQUAI	LITTLE L	EMI-BLACKWOOD
JANET JACKSON	AGAIN	EMI - APRIL MUSIC
JANET JACKSON	ALL FOR YOU	EMI - APRIL MUSIC
		WB MUSIC CORP.
		SPIRIT TWO MUSIC
JANET JACKSON	LETS WAIT AWHILE	EMI - APRIL MUSIC
JANIS JOPLIN	TRY JUST A LITTLE BIT HARDER	UNICHAPPELL MUSIC
JAOHN LENNON	HOW	SONY/ATV SONGS LLC
JAY Z	IZZO	EMI-BLACKWOOD
		JOBETE MUSIC CO.
JAY Z	MONEY AIN'T A THANG	EMI - APRIL MUSIC
JEANNIE RILEY	HARPER VALLEY	GAMBI MUSIC, INC
JENNIFER LOPEZ	AIN'T IT FUNNY	SONY/ATV SONGS LLC
JENNIFER LOPEZ	I'M GONNA BE ALRIGHT	SONGS OF UNIVERSAL MUSIC PUB.
		EMI-BLACKWOOD

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Artist	**Song Title**	**Publisher**
JENNIFER LOPEZ	I'M REAL	BMG SONGS, INC.
		GEMA
JENNIFER RUSH	THE POWER OF LOVE	EMI - APRIL MUSIC
		GEMA
JERMAIN DUPRI	WELCOME TO ATLANTA	ZOMBA ENTERPRISES, INC.
JERRY LEE LEWIS	GREAT BALLS OF FIRE	UNICHAPPELL MUSIC
JESSICA SIMPSON	I WANNA LOVE YOU FOREVER	EMI - APRIL MUSIC
		SONY/ATV TUNES LLC
JESSICA SIMPSON	I THINK I'M IN LOVE WITH YOU	EMI FULL KEEL MUSIC CO.
		SONY/ATV SONGS LLC
JETHRO TULL	CHEAP DAY RETURN	CHRYSALIS MUSIC GROUP
JEWEL	KISS THE FLAME	WB MUSIC CORP.
JEWEL	STANDING STILL	EMI - APRIL MUSIC
		WB MUSIC CORP.
JOHN LEE HOOKER AND CARLOS SANTANA	THE HEALER	BUG MUSIC
		STAR FAITH

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Artist	**Song Title**	**Publisher**
JOHN MAYER	LOVE SONG FOR NO ONE	SONY/ATV TUNES LLC
JOHNNY GILL	QUIET TIME TO PLAY	EMI-BLACKWOOD
K7	MOVE IT LIKE THIS	ZOMBA ENTERPRISES, INC.
KACI	I THINK I LOVE YOU	SCREEN GEMS - EMI MUSIC INC
KANSAS	DUST IN THE WIND	EMI-BLACKWOOD
K-CI AND JOJO	CRAZY	EMI - APRIL MUSIC
		WB MUSIC CORP.
KEB MO	IT HURTS ME TOO	CONRAD MUSIC
		LONMEL PUBLISHING
KEJNY CHESNEY	YOUNG	BMG SONGS, INC.
		CAREERS - BMG MUSIC PUB
		MULTISONGS
KELLIE COFFEY	WHEN YOU LIE NEXT TO ME	WB MUSIC CORP.
KENDALL PAYNE	CLOSER TO MYSELF	EMI-BLACKWOOD
KENNY LATTIMORE	NEVER TOO BUSY	WB MUSIC CORP.
		CHRYSALIS MUSIC GROUP
KID ROCK	BAWITDABA	WARNER - TAMERLANE MUSIC CORP
KINGSTON TRIO	REMEMBER THE ALAMO	VIDOR PUBLICATIONS

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Artist	**Song Title**	**Publisher**
KINKY	TONOS ROSA	EMI - APRIL MUSIC
KISS	ROCK AND ROLL ALL NIGHT LONG	UNIVERSAL-POLYGRAM INTL PUB.
KLYMAXX	THE MEN ALL PAUSE	SONY/ATV TUNES LLC
KORN	BLIND	WB MUSIC CORP.
KORN	DEAD BODIES EVERYWHERE	WB MUSIC CORP.
KORN	LIES	WB MUSIC CORP.
K'S CHOICE	NOT AN ADDICT	FAMOUS MUSIC CORP.
KYLIE MINOGUE	LOCOMOTION	SCREEN GEMS - EMI MUSIC INC
LEANN RIMES	I NEED YOU	EMI - APRIL MUSIC
LED ZEPPELIN	WHEN THE LEVEE BREAKS	WB MUSIC CORP.
LED ZEPPELIN	BLACK DOG	WB MUSIC CORP.
LED ZEPPELIN	DAZED AND CONFUSED	WB MUSIC CORP.
LED ZEPPELIN	FOOL IN THE RAIN	WB MUSIC CORP.
LED ZEPPELIN	THANKS YOU	WB MUSIC CORP.
LEON RUSSEL	GOODNIGHT IRENE	LUDLOW MUSIC, INC
LIL KIM	NOT MATTER WHAT THEY SAY	WARNER - TAMERLANE MUSIC CORP
LIMP BIZKIT	NOOKIE	ZOMBA ENTERPRISES, INC.
LIMP BIZKIT	ROLLIN	ZOMBA ENTERPRISES, INC.

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Artist	**Song Title**	**Publisher**
LINKIN PARK	CRAWL	ZOMBA ENTERPRISES, INC.
LINDA EDER	IN HIS EYES	CHERRY LANE MUSIC PUB. CO.
LINKIN PARK	BY MYSELF	ZOMBA ENTERPRISES, INC.
LINKIN PARK	ONE STEP CLOSER	ZOMBA ENTERPRISES, INC.
LINKIN PARK	PAPER CUT	ZOMBA ENTERPRISES, INC.
	PART OF YOUR WORLD	WALT DISNEY MUSIC CO.
LITTLE SHOP OF HORRORS	DENTIST	TRUNKSONGS MUSIC, LTD
LIVE	TURN MY HEAD	CAREERS - BMG MUSIC PUB
LL COOL J	I NEED LOVE	UNIVERSAL-MCA MUSIC PUBLISHING
		SONY/ATV TUNES LLC
LONESTAR	AMAZE	WARNER - TAMERLANE MUSIC CORP
		CAREERS - BMG MUSIC PUB
		CHERRY RIVER MUSIC CO.
LONESTAR	SMILE	CHERRY RIVER MUSIC CO.
		MUSIC OF WINDSWEPT PACIFIC

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Artist	**Song Title**	**Publisher**
LOU REED AND VELVET UNDERGROUND	VENUS IN FURS	SCREEN GEMS - EMI MUSIC INC
LOUIS PRIMA AND LOUIE ARMSTRONG	OH MARIE	LARRY SPIER, INC.
LUKE SKYWALKER AND 2 LIVE CREW	POP THAT COOCHIE	SONGS OF WINDSWEPT PACIFIC
LULU	TO SIR WITH LOVE	SCREEN GEMS - EMI MUSIC INC
LUTHER VANDROS	IMPOSSIBLE DREAM	ANDREW SCOTT MUSIC
		HELENA MUSIC CO.
LUTHER VANDROSS	CAN HEAVEN WAIT	MUSIC PIECES
		PLAYTHING MUSIC
		EMI-BLACKWOOD
		ZOMBA ENTERPRISES, INC.
		CHERRY LANE MUSIC PUB. CO.
LUTHER VANDROSS	PROMISE ME	EMI - APRIL MUSIC
LYNARD SKYNARD	FREEBIRD	UNIVERSAL-DUTCHESS MUSIC CORP.

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Artist	**Song Title**	**Publisher**
MADONNA	RAY OF LIGHT	ALMO MUSIC CORP.
		WB MUSIC CORP.
		MAUVE MUSIC, INC.
MARC ANTHONY	I NEED TO KNOW	SONY/ATV SONGS LLC
MARIAH CAREY	THANK GOD I FOUND OYOU	EMI - APRIL MUSIC
		SONY/ATV SONGS LLC
MARK MCGUINN	BUSY SIGNAL	WB MUSIC CORP.
MARK MCGUINN	NO WAY	WB MUSIC CORP.
		HOPE -N- CAL MUSIC
MARK WILIS	DON'T LAUGH AT ME	SONY/ATV TUNES LLC
MARVIN GAYE	I HEARD IT THOUGH THE GRAPVINE	STONE AGATE MUSIC CO.
MARVIN GAYE	LETS GET IT ON	JOBETE MUSIC CO.
		STONE DIAMOND MUSIC CORP.
MARY J. BLIGE	REAL LOVE	BUG MUSIC
		UNIVERSAL-MCA MUSIC PUBLISHING
MATCHBOX 20	BENT	EMI-BLACKWOOD

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Artist	**Song Title**	**Publisher**
ME FIRST AND THE GIMMIE GIMMIES	TIME AFTER TIME	SONY/ATV SONGS LLC WB MUSIC CORP.
MEN AT LARGE	SO ALONE	ZOMBA ENTERPRISES, INC.
MERLE HAGGERD	THE BOTTLE LET ME DOWN	SONY/ATV SONGS LLC
METALLICA	STONE COLD CRAZY	EMI GLENWOOD MUSIC CORP.
METHOD AND RED MAN	DA ROCKWILDER	CAREERS - BMG MUSIC PUB BMG SONGS, INC. WARNER - TAMERLANE MUSIC CORP FAMOUS MUSIC CORP. CONRAD MUSIC UNIVERSAL-MCA MUSIC PUBLISHING
METHOD MAN AND RED MAN	BLACKOUT	CAREERS - BMG MUSIC PUB FAMOUS MUSIC CORP. ZOMBA ENTERPRISES, INC.
MICHAEL CARD	JOSEPH'S SONG	WORD MUSIC INC

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Artist	**Song Title**	**Publisher**
MICHAEL PENN	NO MYTH	CAREERS - BMG MUSIC PUB
MICHELLE BRANCH	EVERYWHERE	EMI-VIRGIN SONGS
		WB MUSIC CORP.
MICHELLE BRANCH	HERE WITH ME	EMI-VIRGIN SONGS
MICHELLE BRANCH	I'D RATHER BE IN LOVE	WB MUSIC CORP.
MICHELLE BRANCH	SOMETHING TO SLEEP TO	EMI-VIRGIN SONGS
MILES DAVIS	BYE BYE BLACKBIRD	WB MUSIC CORP.
MIRIAH CAREY	FANTASY	UNIVERSAL-POLYGRAM INTL PUB.
		SONY/ATV SONGS LLC
		WB MUSIC CORP.
MONKEES	VALERIE	SCREEN GEMS - EMI MUSIC INC
MOODY BLUES	KNIGHTS IN WHITE SATIN	ESSEX MUSIC, INC
MYA AND SISQO	GHETTO SUPERSTAR	SONY/ATV TUNES LLC
		WARNER - TAMERLANE MUSIC CORP
		CAREERS - BMG MUSIC PUB
		UNICHAPPELL MUSIC
		TCF MUSIC PUBLISHING

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Artist	**Song Title**	**Publisher**
N SYNC	GOD MUST HAVE SPENT A LITTLE MORE TIME ON YOU	SONGS OF UNIVERSAL MUSIC PUB.
NAS	ONE MIC	ZOMBA ENTERPRISES, INC.
		SONY/ATV SONGS LLC
NATALIE AND NAT KING COLE	UNFORGETTABLE	BOURNE CO.
NAZARETH	LOVE HURTS	HOUSE OF BRYANT PUBL
NEW FOUND GLORY	THAT THING YOU DO	TCF MUSIC PUBLISHING
		UNIVERSAL-POLYGRAM INTL PUB.
NICKELBACK	HOW YOU REMIND ME	WARNER - TAMERLANE MUSIC CORP
NIRVANA	COME AS YOU ARE	EMI-VIRGIN SONGS
NIRVANA	I HATE MYSELF AND I WANT TO DIE	EMI-VIRGIN SONGS
NIRVANA	WHERE DID YOU SLEEP LAST NIGHT	FOLKWAYS MUSIC PUBLISHING, INC.
NO DOUBT	DON'T SPEAK	UNIVERSAL-MCA MUSIC PUBLISHING
NO DOUBT	JUST A GIRL	UNIVERSAL-MCA MUSIC PUBLISHING
NOFX	LIZA AND LOUISE	SONGS OF UNIVERSAL MUSIC PUB.
NOFX	WHATEVER DIDI WANTS	SONGS OF UNIVERSAL MUSIC PUB.
NORA JONES	FEELIN'IN THE SAME WAY	EMI-BLACKWOOD

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
NORA JONES	SEVEN YEARS	EMI-BLACKWOOD
NOREAGA CHARLIBALTIMORE CAMRON	NBC	WARNER - TAMERLANE MUSIC CORP WB MUSIC CORP.
NOTORIOUS BIG	BIG POPPA	EMI - APRIL MUSIC
NU PERSPECTIVE	HI HOP BEAT	MECHANICAL COPYRIGHT PROTECTION
OASIS	CHAMPAGNE SUPERNOVA	SONY/ATV TUNES LLC
ODDS	WENDY UNDER THE STARS	EMI-VIRGIN SONGS
O'JAYS	STAIRWAY TO HEAVEN	WARNER - TAMERLANE MUSIC CORP
OTIS CLAY	WHEN THE GATES SWING OPEN	WARNER - TAMERLANE MUSIC CORP
OTIS REDDING	PAIN IN MY HEART	ARC MUSIC CORP.
OTOWN	WE FIT TOGETHER	FOX FILM MUSIC CORP. WARNER - TAMERLANE MUSIC CORP
OUR LADY PEACE	CLUMSY	SONY/ATV TUNES LLC
OUR LADY PEACE	SUPERMAN'S DEAD	SONY/ATV TUNES LLC
OUTCAST	MS JACKSON	EMI - APRIL MUSIC CHRYSALIS MUSIC GROUP

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
OUTLAWS	THERE GOES ANOTHER LOVE SONG	BUG MUSIC
P DIDDY	BAD BOY FOR LIFE	EMI - APRIL MUSIC
P DIDDY	I NEED A GIRL	EMI - APRIL MUSIC
PAPA ROACH	SHE LOVES ME NOT	CHERRY LANE MUSIC PUB. CO.
PAT BENATAR	HEARTBREAKER	UNIVERSAL - SONGS OF POLYGRAM
PAUL ANKA	MY WAY	CHRYSALIS STANDARDS
		S D R M
PAUL MCCARTNEY AND ELVIS COSTELLO	MY BRAVE FACE	MPL COMMUNICATIONS
		BMG SONGS, INC.
PAUL SIMON	THE SOUND OF SILIENCE	UNIVERSAL-MCA MUSIC PUBLISHING
PAULA COLE	I DON'T WANT TO WAIT	ENSIGN MUSIC CORP.
PAVEMENT	STOP BREATHING	EMI-VIRGIN SONGS
PEARL JAM	ALIVE	UNIVERSAL-POLYGRAM INTL PUB.
PEARL JAM	YELLOW LEDBETTER	UNIVERSAL-POLYGRAM INTL PUB.
PERCY SLEDGE	IF LOVING YOU IS WRONG	IRVING MUSIC, INC.
PHANTOM OF THE OPERA	ANGEL OF MUSIC	UNIVERSAL-POLYGRAM INTL PUB.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
PHIL COLLINS	AGAINST ALL ODDS	EMI-GOLDEN TORCH EMI - APRIL MUSIC
PINK	JUST LIKE A PILL	EMI-BLACKWOOD
PINK	YOU MAKE ME SICK	EMI - APRIL MUSIC SPIRIT ONE MUSIC
PINK FLOYD	ANOTHER BRICK IN THE WALL	WARNER - TAMERLANE MUSIC CORP
PINK FLOYD	BRAIN DAMAGE	HAMPSHIRE HOUSE PUBLISHING CORP.
PINK FLOYD	ECHOES	HAMPSHIRE HOUSE PUBLISHING CORP.
PINK FLOYD	HEY YOU	WARNER - TAMERLANE MUSIC CORP
PINK FLOYD	LEARNING TO FLY	PINK FLOYD MUSIC PUBLISHING
PINK FLOYD	MOTHER	WARNER - TAMERLANE MUSIC CORP
PINK FLOYD	ONE OF THESE DAYS	HAMPSHIRE HOUSE PUBLISHING CORP.
PINK FLOYD	SET THE CONTROLS FOR THE HEART OF THE SUN	ESSEX MUSIC, INC
PINK FLOYD	SHINE ON YOU CRAZY DIAMOND PARTS I THRU V	PINK FLOYD MUSIC PUBLISHING
PINK FLOYD	WISH YOU WERE HERE	WARNER - TAMERLANE MUSIC CORP PINK FLOYD MUSIC PUBLISHING

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
POD	SATELITE	EMI-VIRGIN SONGS
POISON	UNSKINNY BOP	ZOMBA ENTERPRISES, INC.
PRESTON EPPS	BONGO ROCK	DRIVE-IN MUSIC CO.
PRETENDERS	BRASS IN POCKET	EMI - APRIL MUSIC
PRINCE	LITTLE RED CORVETTE	UNIVERSAL MUSIC CORP.
PRODIGY	FIRESTARTER	EMI-VIRGIN SONGS
		UNIVERSAL-MCA MUSIC PUBLISHING
		ZOMBA ENTERPRISES, INC.
PUDDLE OF MUD	BLURRY	WB MUSIC CORP.
PUDDLE OF MUD	SAID	WB MUSIC CORP.
PUDDLE OF MUD	SHE HATES ME	WB MUSIC CORP.
Q-TIP	VIVRANT THING	UNICHAPPELL MUSIC
QUEEN	BOHEMIAN RHAPSOD	GLENWOOD MUSIC CORP.
QUEEN	KILLER QUEEN	EMI GLENWOOD MUSIC CORP.
R KELLY	FIESTA	ZOMBA ENTERPRISES, INC.
R. KELLY	CONTAGIOUS	ZOMBA ENTERPRISES, INC.
R. KELLY	THE STORM IS OVER NOW	ZOMBA ENTERPRISES, INC.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
R. KELLY	WE RIDE	WB MUSIC CORP. EMI-LONGITUDE MUSIC CO EMI-BLACKWOOD SONY/ATV TUNES LLC
RADIOHEAD	CREEP	WB MUSIC CORP. EMI - APRIL MUSIC
RANDY TRAVIS	BETTER CLASS OF LOSERS	WB MUSIC CORP.
RANDY TRAVIS	KING OF THE ROAD	SONY/ATV SONGS LLC
RAVI SHANKAR	GANDHI THEME	EATON MUSIC
RAY CHARLES	BASIN STREET BLUES	EDWIN H. MORRIS & CO.
RAY STEVENS	JACK DANIELS, YOU LIED TO ME AGAIN	HAROLD R. RAGSDALE
RED HOT CHILI PEPPERS	UNDER THE BRIDGE	EMI-BLACKWOOD
REM	STAND	WARNER - TAMERLANE MUSIC CORP
RIGHTEOUS BROTHERS	UNCHAINED MELODY	FRANK MUSIC CORP.
RINGO STARR	PHOTOGRAPH	WARNER - TAMERLANE MUSIC CORP
ROB ZOMBIE	MORE HUMAN THAN HUMAN	WB MUSIC CORP.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
ROBERT EARL KEENE	GRINGO HONEYMOON	BUG MUSIC
ROLLING STONES	START ME UP	COLGEMS-EMI MUSIC
ROLLING STONES	SYMPATHY FOR THE DEVIL	ABKCO MUSIC
ROMA DOWNEY & PHIL COULTER	AN IRISH BLESSING	MUSIC AND MEDIA INTERNATIONAL, INC.
RUSTED ROOT	SHE ROLL ME UP	UNIVERSAL-POLYGRAM INTL PUB.
S CHILD	NASTY GIRL	SONY/ATV TUNES LLC
		MUSIC OF WINDSWEPT PACIFIC
SAM & DAVE	SOOTHE ME	ABKCO MUSIC
SAMANTHA FOX	TOUCH ME	ZOMBA ENTERPRISES, INC.
SARAH MCLACHLAN	BUILDING A MYSTERY	SONY/ATV SONGS LLC
SARAH MCLACHLAN	I WILL REMEMBER YOU	SONY/ATV SONGS LLC
		FOX FILM MUSIC CORP.
		TCF MUSIC PUBLISHING
SARAH VAUGHAN	FLY ME TO THE MOON	HAMPSHIRE HOUSE PUBLISHING CORP.
SCATMAN JOHN	SCATMAN	EMI-BLACKWOOD
		BMG SONGS, INC.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
SCORPIONS	WHEN THE SMOKE IS GOING DOWN	BMG SONGS, INC.
		GEMA
SCREECHING WEASEL	JUDY IS A PUNK	WB MUSIC CORP.
SELENA	I COULD FALL IN LOVE	SONY/ATV TUNES LLC
SHAKIRA	OBJECTION	SONY/ATV TUNES LLC
		EMI-BLACKWOOD
SHEENA EASTON	STRUT	WB MUSIC CORP.
SHERYL CROW	IF IT MAKES YOU HAPPY	WARNER - TAMERLANE MUSIC CORP
SHIRLEY BASSY AND THE PROPELLOR HEADS	HISTORY REPEATING ITSELF	CHRYSALIS MUSIC GROUP
SHONEN KNIFE	SUSHI BAR SONG	BMG SONGS, INC.
SILK	IF YOU	WB MUSIC CORP.
SIMON & GARFUNKEL	AMERICA	FAMOUS MUSIC CORP.
		WARNER - TAMERLANE MUSIC CORP
SIMON AND GARFUNKEL	THE SOUNDS OF SILENCE	UNIVERSAL-MCA MUSIC PUBLISHING
SINEAD O' CONNOR	STREETS OF LONDON	ESSEX MUSIC, INC

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
SIXPENCE	KISS ME	SQUINT SONGS
SLIPKNOT	EVERYTHING ENDS	EMI - APRIL MUSIC
SONNY AND CHER	I GOT YOU BABE	WARNER - TAMERLANE MUSIC CORP
		CHRIS-MARC MUSIC
SOUL II SOUL	KEEP ON MOVIN	EMI-VIRGIN SONGS
SPARKLEHORSE	IT'S A WONDERFUL LIFE	WB MUSIC CORP.
SPIN DOCTORS	TWO PRINCES	SONY/ATV SONGS LLC
SPORTY THIEVES	NO PIGEONS	EMI - APRIL MUSIC
		SONGS OF WINDSWEPT PACIFIC
		WARNER - TAMERLANE MUSIC CORP
SQUARE PUSHER	DON'T GO PLASTIC	EMI-VIRGIN SONGS
ST GERMAIN	ROSE ROUGE	EMI-BLACKWOOD
STAN KENTON	MACHITO	LESLIE MUSIC CORPORATION
STEELY DAN	TWO AGAINST NATURE	DONALD FAGEN
		WALTER BECKER
STEVE AZAR	I DON'T HAVE TO BE ME TILL MONDAY	CAREERS - BMG MUSIC PUB
STEVER MILLER BAND	THE JOKER	HILL & RANGE SONGS

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
STONE TEMPLE PILOTS	PRETTY PENNY	EMI-VIRGIN SONGS
STONE TEMPLE PILOTS	VASOLINE	EMI-VIRGIN SONGS
SUM 41	FAT LIP	EMI - APRIL MUSIC
SUM41	HEART ATTACK	EMI - APRIL MUSIC
SUPERTRAMP	BLOODY WELL RIGHT	ALMO MUSIC CORP.
SYSTEM OF A DOWN	CHOP SUEY	SONY/ATV TUNES LLC
SYSTEM OF A DOWN	SNOWBLIND	ESSEX MUSIC INTERNATIONAL, INC.
SYSTEM OF A DOWN	SPIDERS	SONY/ATV TUNES LLC
SYSTEM OF A DOWN	TOXICITY	SONY/ATV TUNES LLC
SYSTEM OF A DOWN AND WU TANG CLAN	SHAME	CAREERS - BMG MUSIC PUB
		BMG SONGS, INC.
TALKING HEADS	ONCE IN A LIFETIME	WB MUSIC CORP.
		CAREERS - BMG MUSIC PUB
TANTRIC	BREAK DOWN	WARNER - TAMERLANE MUSIC CORP
		WB MUSIC CORP.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
TEARS FOR FEARS	SHOUT	EMI-VIRGIN SONGS
THE BEACH BOYS	SURFIN SAFARI	GUILD MUSIC CO.
THE BEASTIE BOYS	JIMMY JAMES	UNIVERSAL-POLYGRAM INTL PUB.
THE CALLING	WHEREVER YOU WILL GO	CAREERS - BMG MUSIC PUB
THE CALLING BAND	NOTHING'S CHANGED	CAREERS - BMG MUSIC PUB
THE CARDIGANS	LOVE FOOL	UNIVERSAL - SONGS OF POLYGRAM
THE CLASH	GUNS ON THE ROOF	UNIVERSAL-MCA MUSIC PUBLISHING
THE DAMNED	SMASH IT UP	ANGLO-ROCK, INC.
THE DOORS	LOVE HER MADLE	DOORS MUSIC CO.
THE HIVES	DIE, ALL RIGHT	CHRYSALIS MUSIC GROUP
THE PRESIDENTS OF THE UNITED STATES OF AMERICA	PEACHES	UNIVERSAL-POLYGRAM INTL PUB.
		EMI - APRIL MUSIC
THE RENTALS	THESE DAYS	EMI-BLACKWOOD
THE RIGHTEOUS BROTHERS	YOU'RE MY SOUL AND INSPIRATION	SCREEN GEMS - EMI MUSIC INC
THE SAMPLES	LITTLE SILVER RING	ALMO MUSIC CORP.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
THE STARTING LINE	NOTHING'S GONNA STOP US NOW	MUSIC OF WINDSWEPT PACIFIC
		BMG SONGS, INC.
TLC	AIN'T TOO PROUD TO BEG	EMI - APRIL MUSIC
		JOE'S SONGS, INC.
		WARNER - TAMERLANE MUSIC CORP
		JOYCE IRBY
THE WHO	MY GENERATION	DEVON MUSIC, INC.
THRILL KILL KULT	A MARTINI BUILT FOR TWO	EMI-VIRGIN SONGS
TINA TURNER	WHAT YOU GET IS WHAT YOU SEE	WARNER - TAMERLANE MUSIC CORP
TLC	CREEP	EMI - APRIL MUSIC
TOM JONES	SAY YOU'LL STAY UNTIL TOMORROW	UNIVERSAL - SONGS OF POLYGRAM
TOMMY MAKEM AND LIAM CLANCY	THE BAND PLAYED WALTZING MATILDA	MECHANICAL COPYRIGHT PROTECTION
TONY BENNETT	THEY CAN'T TAKE THAT AWAY FROM ME	WB MUSIC CORP.
TOOL	HOOKER WITH A PENIS	EMI-VIRGIN SONGS
TOOL	PARABOLA	EMI-VIRGIN SONGS
TOOL	PUSHIT	EMI-VIRGIN SONGS

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
TOOL	USEFUL IDIOT	EMI-VIRGIN SONGS
TORI AMOS	CORNFLAKE GIRL	SWORD AND STONE PUBLISHING CO.
TRUST COMPANY	TRU 2 DA GAME	CHRYSALIS SONGS
TUPAC	I AIN'T MAD AT CHA	SONGS OF UNIVERSAL MUSIC PUB.
		WB MUSIC CORP.
	MIGHTY MOUSE THEME SONG	VIACOM MUSIC CORP.
U2	ONE	UNIVERSAL-POLYGRAM INTL PUB.
U2	BEAUTIFUL DAY	UNIVERSAL-POLYGRAM INTL PUB.
U2	DESIRE	UNIVERSAL-POLYGRAM INTL PUB.
U2	NUMB	UNIVERSAL-POLYGRAM INTL PUB.
U2	PEACE ON EARTH	UNIVERSAL-POLYGRAM INTL PUB.
U2	SUNDAY BLOODY SUNDAY	UNIVERSAL-POLYGRAM INTL PUB.
U2	THE SWEETEST THING	UNIVERSAL-POLYGRAM INTL PUB.
U2	WALK ON	UNIVERSAL-POLYGRAM INTL PUB.
U2	WHERE THE STREETS HAVE NO NAMES	UNIVERSAL-POLYGRAM INTL PUB.
U2	WITH OR WITHOUT YOU	UNIVERSAL-POLYGRAM INTL PUB.
UPO	GODLESS	FAMOUS MUSIC CORP.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
USER	YOU MAKE ME WANNA	EMI - APRIL MUSIC
		BMG SONGS, INC.
USHER & TWISTA	NICE AND SLOW	EMI - APRIL MUSIC
UTAH SAINTS	LOVE SONG	WB MUSIC CORP.
		CASA DAVID
VAN HALEN	RIGHT NOW	WB MUSIC CORP.
VAN HALEN	SINNER'S SWING	WB MUSIC CORP.
		CHRYSALIS MUSIC GROUP
VAN HALEN	SUMMER NIGHTS	WB MUSIC CORP.
VAN MORRISON	BROWN EYED GIRL	UNIVERSAL - SONGS OF POLYGRAM
VAN MORRISON	CRAZY LOVE	WB MUSIC CORP.
VAN MORRISON	MOONDANCE	WB MUSIC CORP.
VELVET UNDERGROUND	I'M SET FREE	SCREEN GEMS - EMI MUSIC INC
VERA LYNN	HARBOUR LIGHTS	CHAPPELL & CO.
WEEN	THE STALLION	WARNER - TAMERLANE MUSIC CORP
WHITESNAKE	IS THIS LOVE	WB MUSIC CORP.
WHITNEY HOUSTON	HEARTBREAK HOTEL	EMI - APRIL MUSIC

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
WHITESNAKE	HERE I GO AGAIN	WB MUSIC CORP.
WILCO	HOW TO FIGHT LONELINESS	BUG MUSIC
		WARNER - TAMERLANE MUSIC CORP
WILLY NELSON	MY HEROS HAVE ALWAYS BEEN COWBOYS	UNIVERSAL-POLYGRAM INTL PUB.
YAZ	DON'T GO	SONY/ATV TUNES LLC
YES	I'VE SEEN ALL GOOD PEOPLE	WB MUSIC CORP.
YOLANDA ADAMS	I'M THANKFUL	EMI - APRIL MUSIC
YOLANDA ADAMS	WHAT ABOUT THE CHILDREN	EMI-BLACKWOOD
	ZIP A DEE DOO DAH	WALT DISNEY MUSIC CO.
ZUCCHERO	SENZA UNA DONNA	WB MUSIC CORP.
	ZYDECO EXTRAVAGANZA THEME	FLAT TOWN MUSIC CO.
	A DREAM IS A WISH YOUR HEART MAKES	WALT DISNEY MUSIC CO.
	A PHOTOGRAPH OF YOU	EMI-BLACKWOOD
	ANDY GRIFFITH SHOW THEME	LARRABEE MUSIC, INC.

Hecker Declaration in Support of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment - Exhibit A		
Artist	**Song Title**	**Publisher**
	BEAUTY AND THE BEAST	WALT DISNEY MUSIC CO.
		WONDERLAND MUSIC CO.
	EVERYONE FALLS IN LOVE	TAFARI MUSIC, INC.
		UNIVERSAL-POLYGRAM INTL PUB.
	I FEEL PRETTY	UNIVERSAL-POLYGRAM INTL PUB.
		CHAPPELL & CO.
	I'LL BE HERE AWHILE	IRVING MUSIC, INC.
	JURASSIC PARK THEME	SONGS OF UNIVERSAL MUSIC PUB.
	SHAKE YOUR GROOVE THING	UNIVERSAL-POLYGRAM INTL PUB.
	YOU SEXY THING	EMI - APRIL MUSIC
		W.B.M. MUSIC CORP

Deposition of:
Steve Griffin
August 29, 2002

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Q. And the alternative Napster would be a way of doing the very same thing Napster was doing; isn't that correct? Because the alternative platform would be simply another way of doing that?

Mr. Baker: Go ahead.

THE WITNESS: In the definition that you just gave, I would say yes.

By Mr. Kendall:

Q. But you had an understanding, did you not, in this first quarter, that on the OpenNap platform, using your servers, people were trading files in the same way that they were trading filed on the Napster system service; isn't that correct?

A. I learned that to be true, yes.

Q. Do you have a sense of when you learned that to be true?

A. Somewhere in the January, February time frame.

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Tell me what you can recall of your discussions with Mike Weiss.

A. That we were going to move to a new platform. It would be really our, you know, continuation of alpha, but you couldn't call it that, in my opinion, so it would be a beta. And we were trying to move the users into a platform that was -- in our opinion or his opinion specifically, and I

would share that viewpoint, much - - more in keeping with the ruling made by the Ninth Circuit.

Again, the goal is to deploy a P2P product like Morpheus, based on the November 2000 board meeting, and we wanted to make sure that we deployed an architecture that would allow us to achieve that part of it, the peer-to-peer part, that complied with what we felt at the time and still do to this day was the ruling of the Ninth Circuit.

Q. So the legal -- one reason for you to move away from the OpenNap platform was the Ninth Circuit's ruling in the Napster case; is that fair?

A. I would say it is one reason.

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Q. And did you -- you testified you didn't download anything, but did you search for anything?

A. I believe I did.

Q. Do you remember what you searched for?

A. I believe it was by category, as the way the product was outlined, you could do searches based on software documents, audio and video. So I would try categories in all of those.

Q. Do you remember what you searched for in the way of audio?

A. I don't remember specifically, but I do remember that I would only be able to search on those songs or artists that I knew.

Q. Do you have any recollection of looking

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for one of your favorite artists and finding him or her?

A. Yes.
Q. Do you remember who that artist was?
A. It would probably have been Garth Brooks
Q. Okay. Were there a lot of Garth Brooks songs on there? This is now presumably the KaZaA network we're talking about on the FastTrack client.
A. Define "a lot."
Q. Well, if you got a search result do you remember how many hits came back to you?
A. Well, the way the technology platform worked, it's my recollection you could never have any more than 200 of anything. So I don't recall, between zero and 200, how many were there.
Q. But there were some Garth Brooks responses?
A. Yes.
Q. How about in terms of the video? Do you remember what you searched for?
A. I don't recall searching in video nor do I recall any results if I did search.
I'm trying to think what I would have searched for.
Nothing comes to mind.

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Q. When you got the Garth Brooks responses did you have any discussions with anybody connected with KaZaA as to whether or not they had licensing rights to make Garth Brooks available using their software?
A. I had no conversations with KaZaA in regards to that matter, nor was it my understanding that to provide the software product they needed any permissions.

Q. Let me ask you this: You were very careful not to download it, it appears.
If you had downloaded one of those Garth Brooks songs would have viewed that as a legal act? Recognizing that you're not a lawyer.
A. I believe I was unsure, which would be why I did not download anything.
Q. Have you later come to any understanding as to whether or not that would be a legal act?
A. Based on what I read in the press I would say - - and the efforts now of groups like the RIAA to prosecute consumers or have the Justice Department engage them to a criminal act - - that there is a perception in the media that that might be an illegal act.
Q. Do you remember ever checking a software

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called BearShare?
A. I'm aware of that software.
MR. KENDALL: Let me show you what I'm going to mark as Exhibit 260.
(Marked Exhibit 260)
By Mr. Kendall:
Q. And Exhibit 260 is a one-page e-mail from Michael Weiss to Darrell Smith, transmitting an original message from you, Mr. Griffin, to Michael Weiss, dated April 21, 2001.
A. I see it.
Q. Do you recall sending this e-mail to Mr. Weiss?
A. I do not.
Q. Do you recall downloading BearShare?
A. I don't recall it, but I would indicate

from this communication that I did.
Q. This e-mail says, does it not: "Mike, I downloaded BearShare to compare, and they are much larger. I typed in Garth Brooks and got 2700 songs. On Morpheus I got 60. Also I could not tell how fast the connection was on our programs so I chose - - so if I choose a 56K modem I am not sure how to determine. Any ideas? Steve."
Do you see that?

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A. I do.
Q. Does that - - I'm assuming from this e-mail you did use BearShare to conduct a search for Garth Brooks songs; is that correct?
A. That would look correct to me.
Q. And you've got 700. I take it those were responses?
A. 2700.
Q. Excuse me. 2700.
Those are responses to your search query; is that correct?
A. That's correct.
Q. And did you download any of these songs?
A. I did not.

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Q. In your e-mail you say - - are your asterisk points an attempt to summarize Mr. Weiss' reactions to the agenda?
A. I would say, from Mike's - - where it reads, begins to read "Mike's comment to the board" through "that pretty well sums it up," all of those

statements were made by Mr. Weiss.
Q. Okay. The paragraph just above "that pretty well sums up the telephone conversation" which I take it is your wrap-up - -
A. Yes, sir.
Q. The point just above that is as follows: "Main point is that we need to be working on the marketing and PR plan for the migration to the new network. Doesn't anyone understand if we do not get the consumers migrated we do not have a company? Our focus can be on nothing else."

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Now, that's your attempt to summarize or report what Mr. Weiss' view is; is that right?
A. That's correct.

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MR. KENDALL: I'd like to mark now Exhibit 270.
(Marked Exhibit 270)
MR. KENDALL: And for the record, this is an exhibit which we obtained from KVO. It was marked at Mr. Hardison's deposition as Exhibit 131. It is entitled "Key Fundamentals of the StreamCast Network's Business," it's also marked "Privileged and Confidential Attorney/Client Communication." The word "privilege" is misspelled. At the top of it are the words "must read," and I'll represent that Mr. Hardison said he wrote those two words on there.
THE WITNESS: Okay.
By Mr. Kendall:
Q. And he believed Mr. Weiss had written

this document. I'll give you a moment to read the document.

A. (The Witness reviews the document.)
I have reviewed it, not of a specific nature, but I'm ready to attempt to answer any questions.

Q. Okay. Was a document like this one of

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the documents that was written and revised from time to time in an effort to tell investors or the press or somebody on the outside what the fundamentals of your business was?

A. I believe that this document was specifically written to educate KVO on this business.

Q. If you look at the last page of the document - -

A. Yes?

Q. - - at the paragraph called "Market Advantage," Mr. Weiss had written: "In the P2P world those with the most nodes win."
Do you see that?

A. I do see that.

Q. And that is a phrase which not only Mr. Weiss but others have used, to your knowledge, is it not?

A. I have used that myself.

Q. That was going to be my next question.

A. I should have waited, then.

Q. No.
Can you tell me what you understand the term "those with the most nodes win" mean when you use it?

A. Those with the most nodes what.

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Q. When you used the phrase, "those with the most nodes win," what do you understand the term to mean, or what are you trying to communicate?

A. Well, as you build a peer-to-peer infrastructure a user is a node. Kind of a cool way of acting like you know what technology means. So those with the most users win. I believe that's pretty much the same in a have right of it makes a guy like me, who's to the techno geek sounds like he knows what he's talking about. Those with the most nodes win.

Q. Is that because on at least on your StreamCast model you do have a revenue model based on advertising, and you are paid in some way on a pre-user basis?

A. No, it does not.

Q. In what way will you win by having the most nodes?

A. As I used it. I can't speak for how others used it - -

Q. That's what I'm asking.

A. As I used that, sir, it was getting back to the core of business application of Morpheus, which was to put this software on millions and millions of desktops and allow it to morph and change

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as applications took place. But in the understanding of peer-to-peer, those with the most nodes wins, really gets into the power, and it's a talking point to talk about the power of the distributed hardware

and distributed bandwidth of having millions of users out there that would connect and exchange information in a true decentralized peer-to-peer environment.

So those with the most nodes would make it a large peer-to-peer network of users, as they form to use the software.

And that network of users, by its definition, gives tremendous cost advantages to distributed computing, to all sorts of architectural issues. That if you don't have a lot of, quote, nodes, i.e., a company like Groove Networks at the time they had some interesting technology, and no users - -

Peer-to-peer does not work without the distributed architecture, in my understanding of it as a nontechnical person, without lots of users to distribute hardware and bandwidth.

Q. But isn't another fact that if you have a lot of users you can, to use the words of another document, monetize them by using your distribution platform to project advertising to them?

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A. One of many revenues streams, yes.

Q. But that is certainly one revenue stream that would be greater the more nodes you had?

A. Or users.

Q. Or users?

A. Just as Yahoo or AOL would generate more revenue from people hitting their website property than Joe's Quilting Company.

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MR. KENDALL: I'm going to mark the next document as Exhibit 271.

(Marked Exhibit 271)

By Mr. Kendall:

Q. And, Mr. Griffin, I'm not going to have detailed questions on this, but I'll just ask you if you could identify Exhibit 271 which is captioned "Legal Notice and Terms of Service."

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A. I acknowledge that I am viewing Exhibit 271 which is headed Bullet Numeral 1, "Legal Notice and Terms of Service."

Q. And at the very end it has a date of April 2001; is that correct?

A. Yes, I see that date.

Q. Can you identify this document?

A. Not particularly. It appears, though, that it may be a - - terms of notice or service either for the Morpheus software product or a website, but I would assume it would be for the MusicCity or the Morpheus software product that was going to be launched at the end of April.

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Deposition of
Steve Griffin
August 30, 2002

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Q. Then you wrote: "I fully understand that consumers are making choices to put copyrighted material in shared folders and share it with other consumers around the world."

You wrote that, did you not?
A. Yes, I did.
Q. Could you describe the bulletin board system that MusicCity.com had in effect from the launch of the alpha software in early January 2001, up to the present?
A. The discussion boards?
Q. Yes. And we'll call them – should we call them discussion boards? Is that --
A. I --
Q. Okay.
A. I'm just trying to gain understanding.
I can't give you a lot of information about those. As I recall, it was a forum-type, third-party discussion board that was introduced when the Morpheus/FastTrack could have been in the Morpheus OpenNap -- I don't recall when it actually

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was launched --
Q. But it was certainly there during the beta phase, the FastTrack phase?
A. I believe it was for a period of time. And it gave consumers a chance to connect and ask questions of one another and receive threaded messages or discussions back.
Q. So the discussion board was really a forum for users of the system, or people who had logged onto MusicCity.com to communicate with one another?
A. I believe that's basically correct. I don't think, though, that it was a requirement that they had to have launched the Morpheus software product. I believe, and I'm not certain, that they

could have actually accessed the discussion boards from simply the website.
Q. That's what I meant to signify with my question.
You said they were up for a period of time. Did there come a point when they were taken down?
A. I think there became a point in time, and I am not certain, that the server on which the discussion boards were located became in disrepair

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and they were not repaired.
Q. Can you place that in time - - was that, for example, before the - - what I'll call the Pearl Harbor attack of late February of this year?
A. I believe it was.
Q. Okay. And do you have any sense of how long before that it was?
A. I have no idea.
Q. Okay. During the time that the discussion boards were in use, were you aware that Mr. Weiss, while he was CEO, was monitoring those boards daily?
A. That was brought to my attention, yes, sir.
Q. After Mr. Weiss' departure did anybody resume the monitoring of those boards?
A. Not to my knowledge.
Q. Were they any rules for what users could discuss on these discussion boards?
A. I don't believe there were, quote, any rules in place of what they could or could not discuss.

Q. You were - - you've read Mr. Weiss' deposition. You're aware of his testimony concerning how he would remove evidence of copyright

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infringement?
A. I am aware.
MR. BAKER: I --
MR. KENDALL: I'll characterize --
By Mr. Kendall:
Q: The testimony will speak for itself, but on that general topic you're aware --
A. I am aware that on numerous occasions Mr. Weiss would delete or block information in general.
Q. Okay. Did you ever have any discussions with Mr. Weiss about the kind of information he was deleting or blocking?
A. I did not.
Q. Did you ever give any direction to him as to what information to delete or block?
A. Not that I can recall.
MR. KENDALL: I'll ask that the next exhibit be marked as 292, please.
(Marked Exhibit 292)
By Mr. Kendall:
Q. Mr. Griffin, this is an e-mail from you to Bill Kallman, dated August 21, 2001. It's actually a string of e-mails. It is MusicCity ID No. 151204.

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A. (The witness reviews the document.)

I see it.
Q. In the e-mail to Bill Kallman that Mr. Kallman forwards to you, Mr. Weiss says -- and this is on the second page: "You may not have known this, but I personally viewed every post prior to it appearing in the public discussion board, paren, usually after midnight and then once during the day, close paren. It was a good way for me to keep a handle on how our users felt."
You see that?
A. I see that.
Q. And I take it you had read - - because you reply to this e-mail, you read Mr. Weiss' e-mail?
A. I had.
Q. And this was just after Mr. Weiss had been terminated; is that correct?
A. Yes, it is.
Q. And he had been terminated on the agreement of you, Mr. Kallman, and Mr. Tung; is that correct?
A. He had been what?
Q. It was a joint decision to terminate about Weiss made by you, Mr. Kallman and Mr. Tung?
That's correct.

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I'm sorry. No, that was not correct.
Q. Okay.
A. It was a joint decision based on the board at the time, which was Mr. Kallman and Mr. Griffin.
Q. Mr. Tung was not on the board. Got it.
Mr. Weiss' e-mail continues on: "I was also able to delete postings that were not

appropriate, including anything that could potentially put the company in legal jeopardy. Postings have been put on the boards today and yesterday that openly discusses unauthorized copyrighted works being available through Morpheus."

Do you see that?

A. I do see that.

Q. Now, in the - - you reply to Mr. Kallman's somewhat cryptic message, and that will speak for itself, but did you take any steps after Mr. Weiss' departure to see that the discussion boards were monitored to prevent information from being posted that discussed unauthorized copyrighted works being available through Morpheus?

A. I did not.

Q. The e-mail - - the e-mail service information at MusicCity.com, I'll direct your

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attention to that.

A. Yes.

Q. What was the purpose of that particular e-mail service?

A. The purpose of info at MusicCity.com was to give, in theory, users of the Morpheus software product a place that they could request information when they were having difficulties installing and/or using the Morpheus software product, in an attempt to provide some sort of customer service, to use that vernacular.

Q. Was it also available not just on installation but for problems users might have using the service?

A. I thought that's what I said, yes, sir.

Q. And what people - - did this service begin with the alpha OpenNap service or was that something that began with the FastTrack service in April of 2001?

A. It's my recollection that it began with the Morpheus software product.

Q. And, I'm sorry, does that mean the alpha Morpheus or the beta Morpheus?

A. Let's review our terms since it's been a day.

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Q. Sure. I think yesterday we had called and I think your speech refers to the OpenNap phase as the alpha form of the Morpheus client from early January to late April of 2001; the beta phase, the FastTrack client, from late April to - - late April 2001 to late February of 2002.

A. I don't recall it that way. Let me tell you my interpretation so we can agree on the terms.

Q. Okay. Sure.

A. The OpenNap was alpha. Morpheus was not introduced until the Morpheus/FastTrack.

Q. Okay.

A. And that was beta.

Q. Got it.

A. So I believe it was introduced, to answer your question, in the Morpheus which would be Morpheus/FastTrack, beta.

Q. Okay.

A. April, to answer your question.

Q. What individuals at MusicCity responded under the name "Info," or information, @MusicCity?

A. A variety of individuals.

Q. Can you name all those that you can identify?
A. I can name a couple.

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Q. Okay.
A. Jason Griffin responded to them.
Q. Mr. Griffin is your son?
A. He is.
Sean Donnelly responded to them.
Q. And Mr. Donnelly was - - at least for a period of time was a MusicCity employee, was he not?
A. He currently is a MusicCity employee.
Q. Currently is.
A. At the time - - and I can't recall; you probably have gotten the list we've provided to you - - there were about six - - four to six individuals that were in essence summer interns selling advertising, and all of those individuals would attempt in the morning to respond to the ever-growing volume of info@MusicCity e-mails, and then selling advertising later in the day into the evening.
Q. This will only be approximate, I recognize, but can you give us some idea of the volume of info requests over time, how it may have changed?
A. We started, if I recall, in July responding to e-mails, or attempting to. And at the time there were probably 1500 a day. I think I was told that we have now close to 175,000 unresponded

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e-mails, many of which would be viruses, where

someone sends, you know, a file that may include a virus, but I don't know the actual characterization by topic of what they are today.
But at the time it started out so that one person could not respond to 1500 e-mails a day, even if a No Response. So we were trying to respond as best we could to all of them. It became quickly apparent that if we had the money we would need to move to some sort of automated responders as many companies use.
Q. Is there any way to tell from the various e-mails - - I'll show you a number in a minute -- as to the identity of the particular person responding to the e-mail?
A. Other than their e-mail address?
Q. I'm sorry. Let me rephrase the question. It wasn't clear.
The responses invariably come from Info@MusicCity.
My question to you, you've identified a number of individuals who wore that hat. Is there any way to, from the e-mail itself, determine which MusicCity employee or summer employee was writing e-mail as Info@MusicCity?

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A. I don't think so. I'm not sure, though.
Q. You say you started responding in July, and I'm assuming you meant July 0f 2001 --
A. Yes, sir.
Q. -- to getting 1500 e-mails a day.
MR. KENDALL: I'm going to mark as Exhibit 293 an e-mail dated November 30, 2001, from one Don Canaan to a number of different addresses,

including S. Griffin at MusicCity. This item is MusicCity ID No. 148727.

(Marked Exhibit 293)

THE WITNESS: (The Witness reviews the document.)

By Mr. Kendall:

Q. Mr. Griffin, your e-mail address in November of 2001 was SGriffin@MusicCity.com, was it not?

A. Yes, it was.

Q. This is a user e-mail from apparently somebody named Don Canaan. The subject matter is Harry Potter on KaZaA.

Now, at the time, November 2001, the KaZaA network and the Morpheus network were interconnected, were they not?

A. They were.

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Q. This e-mail says that he was downloading Harry Potter and the user for whom he was downloading it logged off, and he's trying to make contact with this user who has an address at MusicCity.com.

Now, is there any way to trace - - from the records available to you then was there any way to trace who WidespreadP at MusicCity.com was?

A. I don't believe that's an e-mail address, Mr. Kendall. I believe that that is a user name - -

Q. Excuse me - -

A. That would be identified on the Morpheus software product as Widespread@MusicCity. And as Mr. Smith testified, since the networks could see visibility into both KaZaA and MusicCity, that it -- it could easily have said Widespread@KaZaA.com to

indicate a KaZaA user versus a MusicCity user of the software. There was no such address of WidespreadP or Widespread at MusicCity.com as an active e-mail address.

Q. And do you know that because you made a check or an inquiry on this?

A. No, I'm just -- we don't address e-mail addresses that way internally. It's by first name and last -- or initial, last name and/or bus.dev, info, etc.

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Q. You would have known, though, that this was the MusicCity user name, would you not? That the user name that Don Canaan is searching for, you could have identified that user name in your registration database; isn't that correct?

A. I could not have.

Q. I'm sorry. But Mr. Smith, as he testified yesterday I believe, or the day before, could have identified that user and blocked that user name?

MR. BAKER: Let me just object to the extent it calls for speculation.

By Mr. Kendall:

Q. All right. Let me ask you: Do you know whether MusicCity, then, in November of 2001, had the capacity to block user names?

A. I believe, as Mr. Smith testified, that we did have the ability to block user names.

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Q. The example used, then - - if this is not

a screen shot, the example used is a group called the Eagles; is that correct?
A. Yes.
Q. And there are various songs listed from the Eagles Greatest Hits album, are there not?
A. It appears that there are. I didn't know they did a PeeWee Herman song, but they may have.
Q. Thank goodness that is not attached.
And this subject matter of Ms. McElwee's e-mail says: "Documents for conference call discussion," does it not?
A. Yes.
Q. Do you remember what the conference call was going to address in early December of 2001?
A. I do. It was a conversation among a lot of different people in the company, but if you will notice specifically they were all related into the sales and business development function of the company with the exception of Mr. Smith and Ms. Schaffer, who - - and, well, and Mr. Panetti. It was most of our company as it looks like at the time.
The discussion was to focus on the new

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Morpheus product and to use the developed screen shots, picture, jpegs - - I'm not sure exactly the origin of such document - - to talk about the different advertising zones that we were going to have, and provide an opportunity for our salesmen to provide input back to our technical team where they would like to see other revenue-producing opportunities within the proposed Morpheus software product.
Q. But in these discussions in documents,

the reference to Morpheus 2.0 would be the planned product, not the very recently released Morpheus 2.0 in 2000; is that correct?
A. Yes.
Q. Okay. Who is Mr. Jason Geraci?
A. He was a salesman.
Q. And an employee of MusicCity --
A. At the time.
Q. --.com at the time.
This document No. 296 was produced in the ordinary course of business at MusicCity, was it not?
A. I believe it was.
Q. And it was the ordinary practice of MusicCity to generate such documents?
A. Not - - not to my knowledge to generate a

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document to have a sales organization provide input to a future product.
Q. But this was within the course of MusicCity's normal business; is that correct?
A. Yes.
MR. KENDALL: I'm going to mark the next exhibit as 297.
(Marked Exhibit 297)
THE WITNESS: (The Witness reviews the document.)
I've reviewed it.
By Mr. Kendall:
Q. This document has MusicCity ID 148613. It's a little bit earlier than the last document we saw, Exhibit 296. It's an e-mail from Darrell Smith to you, it's dated November 28, 2001, its subject is "Morpheus Screen Shots." And in the e-mail Mr. Smith

says: "Ignore the MusicCity.com graphic. It's just a placeholder."

Can you tell me what this document is and what Mr. Smith's advice to you refers to?

A. Ignore MusicCity.com placeholder? Is that the question, sir?

Q. Yes. "Ignore the MusicCity.com graphic, it's just a placeholder."

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A. Sure. I mean, that was not a logo that we were going to use going forward, so it was just a placeholder that we would substitute a final graphic later.

Q. The graphic he's referring to, I take it, is the graphic - - for example, on the first page of the attachment up at the upper left-hand corner that says "MusicCity.com," and it appears to show an urban skyline?

A. Yes.

Q. Okay. Is that the only part that you're to ignore? I'm sorry. That's unclear.

Mr. Smith is sending you this document for a purpose. He's telling you to ignore part of it.

Is the part that you are to ignore just that MusicCity graphic at the top left-hand corner of certain of the pages?

MR. BAKER: I'm going to object to the question. I think the document speaks for itself.

Go ahead and answer the question - -

By Mr. Kendall:

Q. All right. The document speaks for itself.

Let me ask you what your interpretation,

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Mr. Griffin, as the addressee of the e-mail, was of Mr. Smith's statement to you. In other words, what is to be ignored in this document?

A. This document was a review of a prototype product that had not been launched into the market yet, and he had sent me this document so that I could have a review of the different advertising sites and the layout. And it was my first time to see the designers, I believe, views on this.

And so he was in - - before he knew that I would take great exception to the skyline, as you referred to it, MusicCity.com logo, he was basically precluding me from firing back, saying, What in the heck's this logo here for? You know, I hate it. I think that's all he meant by that.

Q. Okay. And was this a step in the planned development of what was then contemplated as Morpheus 2.0?

A. These were examples of what he proposed that the screens should look like.

Q. Again, on the next-to-the-last page, could you describe what that is? That does not have the MusicCity graphic up at the top left.

A. That looks like a copy of the same exact slide that you showed me in the last exhibit.

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Q. The last exhibit was somewhat cut off, I believe. Here we have the full-screen shot, do we not?

A. I believe that's true.
Q. And there is a user name identified who is apparently an Eagles fan, named chungchung@MusicCity. Do you see that?
A. I do.
Q. Do you know if that was an actual MusicCity user name?
A. I don't think it was, but I would not know of that.
As I indicated before, I'm not sure if this was a screen that was made up or not. It appears to be based on type styles that it's one that was physically created by the graphic artist to demonstrate what the final product might look like.
Q. You were aware, were you not, that the Eagles are a popular band?
A. Yes.
Q. And that they had many copyrighted albums on the market that they were selling through their label?
A. I'm not sure of all the sources that they sold and which label they were sold through, but yes.

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Q. Did MusicCity have any license or authorizations to make available music from Eagles albums in November of 2001?
MR. BAKER: I'm going to object to the question, assumes facts not into evidence
By Mr. Kendall:
Q. I'll stand by the question.
A. At this point in time, and currently StreamCast Networks does not make music available to consumers.

Q. Did you have any discussions with Mr. Smith about the advisability of using in a prototype examples of copyrighted music?
A. I did not have any conversations with Mr. Smith about that. I don't recall.

* * * *

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THE WITNESS: It's not my opinion to tell the content owners what to do in protecting or not protecting their content. I'm not sure that in broadcast radio, which was the context of the question, it talks about that. And I'm not sure I understood your question well enough to give you the answer you're probably looking for.
MR. KENDALL: Thank you.
The next document I'm going to mark is Exhibit 300. And that is an e-mail from Shawn Donnelly to Trey Bowles dated July 19, 2001, subject "MusicCity.com." It's transmitting some earlier e-mail traffic. In particular, an e-mail from a Dave Rochlin at Emacula.com which was responding to an earlier e-mail from MusicCity's Sean Donnelly. I'll give you just a moment to read that, if I may.
(Marked Exhibit 300)
THE WITNESS: (The Witness reviews the document.)
Yes, sir.
By Mr. Kendall:
Q. First of all, I believe you've already identified both Mr. Donnelly and Mr. Bowles as StreamCast employees as of July 2001. Is that correct?

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A. Yes. Excuse me. Mr. Donnelly was an independent contractor but working in his capacity as a summer intern.
Q. Okay. And he was reporting to Mr. Bowles; is that correct?
A. Yes, sir.
Q. There are a couple of abbreviations. I wonder if you can identify. One is CPC. The other is CPM.
A. Well, I believe that those acronyms have a variety of definitions, but in the context of this document CPM is what the advertising is cost per thousand. CPC is cost per click. And if you refer to Page 2 of 3, CPA are costs per action, all related to advertising terminology.
Q. Did StreamCast have some kind of arrangement with Emacula.com? Excuse me. Let me rephrase that.
The initial e-mail refers to the last deal, and was Emacula.com, did it have a relationship with StreamCast which in some way concerned advertising?
A. I don't believe they did based on this e-mail.
Q. Do you know - - do you remember

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independently whether they were one of your advertising companies?
A. I don't ever recall Emacula being a person that sent us a check, so I - - it could have gone under a different name, but that name does not ring a bell.

Q. Does the name Dave Rochlin ring a bell?
A. It does not.
Q. I take it from what you said a moment ago that your summer interns, one of their jobs was to sell advertising; is that correct?
A. That was their primary job.
Q. Okay. And the letter to Mr. Rochlin, I take it, from Mr. Donnelly, would be an attempt to sell advertising; is that correct?
A. Yes.
Q. Now, he says - - do you know what Vibe, v-i-b-e, Spin, s-p-i-n, are?
A. My understanding is they're magazines. It may also mean that they're web properties. I'm not sure in which context, but I'm fairly specific that both of those are magazines.
Q. Okay. And did MusicCity - - or did StreamCast often attempt to link advertising to other matters so that a user could see something and then

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realize there was an opportunity to buy something?
A. We did not, and we did not have the technical ability to do what Mr. Donnelly is outlining here.
Q. What Mr. Donnelly is outlining is, if I understand the letter - - I'm reading now from the middle of the letter on Page 2. He says: "In addition, Morpheus has such a high media content with almost every user interested in music in many capacities. If someone were to download a Pearl Jam song and then see a banner ad featuring Spin's cover story on Pearl Jam, the probability of them clicking on that ad are through the roof."

Do you see that portion of his letter?
A. I do.
Q. Now, Pearl Jam was a popular music group, is it not?
A. I believe it is. I don't know how popular they are.
Q. It certainly has copyrighted music available for sale in record stores, does it not?
A. I believe it does.
Q. And did SpinCast at the time have any license to make available in any way Pearl Jam music?
MR. BAKER: Let me just object. Assumes

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facts not into evidence.
THE WITNESS: I do not believe that we had any licenses, nor do I believe that any licenses were required with Morpheus software product.

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By Mr. Kendall:
Q. I'm going to mark as Exhibit 315 a July 18, 2001, e-mail to Info@MusicCity.com. It's StreamCast ID No. is 136945. This user states: "Hello. Is there any way you could tell me why my downloaded movie files, Shrek, for example, it won't play, just sound and no picture. Please help. Tim."
The response from Info@MusicCity.com is: "They have a bad file root or you need a plug-in."
Have you ever seen Exhibit 315 before, Mr. Griffin?
A. I have not, Mr. Kendall.
(Marked Exhibit 315)

By Mr. Kendall:
Q. I'm going to mark as Exhibit 316 a one-page e-mail dated July 18, 2001, to Information@MusicCity.com, StreamCast ID No. 136947 in which the user e-mails: "Hi. I have loaded the Sixth Day and the Mummy's Return, but there is no picture coming except voice. Please tell me what's wrong. I am desperately waiting for your reply. My e-mail number is" - - and it's given - - "thanks." There's some misspellings.
The response from Info@MusicCity.com is: "Go to the discussion board and find the links for

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the plug-ins."
Have you ever seen Exhibit 316 before?
A. I have not, sir.
(Marked Exhibit 316)
By Mr. Kendall:
Q. I'm going to mark as Exhibit 317 a one-page e-mail dated July 18, 2001 to Info@ "MusicCity.com which has StreamCast ID No. 137081.
This e-mail states: "To whom it may concern: First of all, I want to say congratulations on such an amazing program. However, I have a small problem. When I download songs, music videos, and images I have no problem. However, when I download moves, for example, The Matrix, Blair Witch, Tomb Raider, and then it is fully downloaded, it goes to My Media capital M, capital M. When I click to play it, the Theater, capital T, opens - - opens up, and the screen pops up with Player Error, capital P, capital E. Then I can't play the movie. What do I do? Thanks so much, Mike."

The response from Info@MusicCity.com is: "Go into Windows Media Player," capital WMP. "Then go to Help. Than go check for player updates and get all the updates. That should fix the problem."

Have you ever seen Exhibit 317 before,

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Mr. Griffin?

A. No sir.

(Marked Exhibit 317)

By Mr. Kendall:

Q. I'm going to mark as Exhibit 318 a one-page e-mail dated July 19, 2001, addressed to Info@MusicCity.com. It is StreamCast ID No. 143427, user, Robert Callahan, e-mails: "I downloaded the movie Moulin Rouge, and when I play it I get no picture. I have perfect sound. This is the first time I have tried a movie. Am I doing something wrong or is it just possibly a poor download? Robert."

The response from Info@MusicCity.com is as follows: "Robert, there are a couple of things you might try. First make sure you have all the appropriate plug-ins to play movies. This is probably what is wrong. Go the discussion board" - - I think it should be "go to" the discussion board - - "and search the posts for help with this. I was on this morning and there were several posts helping with where to get the plug-ins as well as which ones you need.

"Second make sure you have the most recent updates for your media player. Just go to the

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Help section on Windows Media Player," capital WMP, "and get the updates. This probably isn't the reason for your problem, but it couldn't hurt to try. Hope this helps. Info@MusicCity.com."

Mr. Griffin, have you ever seen Exhibit 318 before?

A. I have not.

(Marked Exhibit 318)

By Mr. Kendall:

Q. I'm going to mark the next exhibit 319. This is a one-page e-mail dated July 19, 2001, to Info@MusicCity.com. The subject is "How do I burn a copy onto a CD or save on a floppy?" StreamCast ID143398.

The user e-mails. "Dear Sir, slash madam, I just downloaded Morpheus to my PC. I downloaded the Tupac Shakur X rated version of How Do You Want It? However, I'd like to copy it and give it to a friend of mine to watch. How can I do this from the Morpheus program? Is there a way to send it via e-mail or any other methods I do not seem to find in the site? Please advise and assi[illegible] sincerely," name of the user.

Info@MusicCity.com responds, "Brian, just attach the file to an e-mail. This should work fine.

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Hope this helps, Info@MusicCity.com."

Have you ever seen Exhibit 319 before.

Mr. Griffin?

A. No sir.

(Marked Exhibit 319)

MR. KENDALL: I'm going to mark the next

exhibit 320.
(Marked Exhibit 320)
By Mr. Kendall:
Q. This is a one-page e-mail dated August 30th, 2001. It's to Info@MusicCity.com. The subject is "please help me, slash, movie help". It's StreamCast ID No. is 137925. The user writes in - - e-mails in: "Dear MusicCity: I've downloaded the movie Bring It On four times, and every time I play it the sound of the movie appears but not the picture. What is happening? And also the movie Pearl Harbor has been downloaded many times, too, but a window pops up and says, Player Error. Please help me. Thank you, confused."
The responding e-mail from Info@MusicCity.com says: "Well, Chong," the user name, "try downloading the current media player and all the plug-ins. That should help."
Mr. Griffin, have you ever seen Exhibit

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320 before?
A. I have not.
MR. KENDALL: Can you take just a short pause here so we can get the next round of documents?
MR. BAKER: Sure.
THE VIDEOGRAPHER: We're going off the record. The time is 11:52 a.m.
(Recess, 11:52 a.m. to 12:03 p.m.)
THE VIDEOGRAPHER: The time is 12:03 p.m., and we are back on the record.
By Mr. Kendall:
Q. Mr. Griffin, I asked you if you had ever seen the previous several exhibits, and you responded

as the record will reflect.
Did you ever discuss any of them with anybody?
A. I don't believe I did.
Q. Did you ever personally respond to any inquiry addressed to Info@MusicCity.com?
A. I do not, I don't believe
Q. Did you have access during 2001 to the e-mails that were coming in to Info@MusicCity.com?
A. I don't think I did. They were set up on a server access by the people that would be responding to them.

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I'm going to mark now as Exhibit 377, an e-mail from Jody Pace to Trey Bowles, dated February 21, 2002. And I'll ask you, please, to review that e-mail. It is - - it has attached to it a press release from a company called Gracenote. The press release is headlined "Gracenote announces music management solution for peer-to-peer networks." It's dated November 6, 2001.
(Marked Exhibit 377)
THE WITNESS: (The witness reviews the document.)

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Okay.
By Mr. Kendall:
Q. In February 21, 2002, was Miss Jody Pace, the sender of this e-mail, your administrative assistant?
A. She'd really moved in more into working

with Trey Bowles in marketing and business development as her, I think, title suggests somewhere in one of her e-mails I saw.

Q. She was in the Franklin office at this time, was she not?

A. Yes, she was.

Q. And how many people were there in that office?

A. In February, 12, fourteen.

Q. Did you see her on a daily basis?

A. I believe I did, when I was in town.

Q. And did you have another administrative assistant or did she continue to function as your own administrative assistant?

A. That was Dana McAlwee the time. I had another assistant.

Q. Do you see on Page 3 the February 15, 2002, e-mail from Mr. Steven White of Gracenote to Ms. Pace?

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A. I see several, on Page 3 of 4?

Q. On Page 3 of 4.

A. A subject regarding "please call me"?

Q. Yes.

A. Yes, sir, I do.

Q. And that paragraph, in the middle of that e-mail, it says to Ms. Pace: "We worked with Napster early on to help them identify the audio being traded over their network and tie into a rights payment infrastructure, and have worked with other peer-to-peer companies to help them develop identification and payment systems."

Do you see that paragraph?

A. I do.

Q. Are you familiar with the company Gracenote?

A. I am not.

Q. Have you ever heard of it?

A. I believe it was brought up in Mr. Smith's deposition a couple of days ago. I may have read some press about it, but I couldn't tell you what they do until I read the last page of the press release a second ago.

Q. And on Page 1 of this Exhibit 377 Ms. Pace e-mails to Trey Bowles: "Trey, what this

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is, is a technology that will allow Morpheus to see what our users are sharing so that in turn we can, quote, tie into a rights payment infrastructure, close quote. I know this is something we do not" - - and those two words are in capital - - "want to do, but am not sure how I need to word that. Suggestions - - do we need a phone call?" "Do" is in all caps. "Thanks, Jody."

Did you have any discussions with Ms. Pace at or about this time as to this inquiry from Gracenote?

A. I did not.

Q. When Ms. Pace in her e-mail to Mr. Bowles uses the words "tie into a rights payment infrastructure" she's quoting the e-mail we just looked at from Mr. White, is she not, dated February 15, 2002?

MR. BAKER: I object to the question. I think it asks for speculation.

By Mr. Kendall:

Q. Well, let me ask it this way: When you look at Mr. White of Gracenote' e-mail he uses the words, on February 15, "tie into a rights payment infrastructure." Do you see that on Page 3 of 4?
A. I do.

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Q. And then when you look at Page 1 of 4 you see the phrase in quotation marks in Ms. Jody Pace's e-mail, quote, tie into a rights payment infrastructure, close quote, do you not?
A. I do.
Q. Did you have any conversations with Mr. Bowles about this time about whether Gracenote could assist you, as a peer-to-peer company, in developing some kind of identification and payment system?
A. I did not.
Everyone knew that we were already working on a microcommerce platform with the CintoA digital packaging, as I referred to a few hours ago, so I don't think we needed any help in that area.
Q. But I believe your testimony about CintoA was that the originator of the content had to place that wrapper around the content first?
A. That's correct.
Q. The Gracenote project, or at least according to the press release, would enable people to identify content being traded on the network and provide for a payment system, does it not?
MR. BAKER: I'm going to object to the extent it asks for speculation.

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THE WITNESS: Are you on the press release now?
By Mr. Kendall:
Q. Yeah.
A. Okay. Let me read that again.
Q. Sure.
A. (The witness reviews the document.)
I don't know how this would work once I have reviewed it with a decentralized peer-to-peer network like the Morpheus platform was using at the time. It might have been, but I don't know how it would work.
Q. Did you talk to any company or person about what could be done to construct an identification and payment system for content that was already being traded and exchanged and copied over the Morpheus system?
A. We did not. Sorry.
MR. BAKER: I was going to object.
Go ahead, you've answered.
THE WITNESS: I did not.
By Mr. Kendall:
Q. Are you aware of anybody in the company who did?
A. I don't know of anyone that would.

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MR. KENDALL: I'm going to have Exhibit 384 marked, Mr. Griffin. This is one I've sent to your counsel prior to the deposition. It is a media kit dated August 6, 2001. It's an e-mail from Trey

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Bowles to a number of people, including you, and it transmits a document that begins, or is headlined "Advertise on MusicCity.com/Morpheus," and a trademark sign is there by "Morpheus."

(Marked Exhibit 384)

By Mr. Kendall:

Q: I'm going to have questions for you about the second – oh, I'm sorry.

A. (The witness reviews the document.)

Yes, sir.

Q. What was your understanding of the purpose of this media kit?

A. My understanding of the purpose of the media kit is the summer salesmen approached Mr. Bowles and said, We have nothing to hand out about the advertising on MusicCity/Morpheus, both the website and in the software product. And they needed to send something out to potential advertisers who asked for more information.

Q. Now, on Pages 2 and 3 of this media kit a number of magazine and newspaper articles are quoted, are they not?

A. Yes, they are.

Q. You were sent a copy of this media kit. Did you read it then, or later?

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A. I believe I did.

Q. What was your understanding of the reason for quoting these newspapers and magazines, Time, USA Today, The Tennessean and so forth on Pages 2 and 3?

A. It's my understanding that as an emerging growth or start-up company --

Q. I'm sorry.

A. - - as an emerging growth or start-up company a lot of people had never heard of MusicCity or Morpheus. And at the time, I believe these were the only seven places that had really written anything about the company.

Q. When you received these electronically were you aware that these titles were also hyperlinks to the actual articles themselves?

A. Yes, I was.

MR. KENDALL: I'd like marked as 385 a Time.com article --

THE WITNESS: Yes, sir.

MR. KENDALL: -- by one Chris Taylor, entitled "Morpheus: The better Napster."

(Marked Exhibit 385)

By Mr. Kendall:

Q. Now, Time.com and Time Magazine are different entities; is that correct?

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A. (Pause).

Q. Strike that.

This article is from Time.com, is it not?

A. I believe that's what is says on this article.

Q. Did you either, when the article appeared or when you got this advertising kit which was hyperlinked to the Time.com article, have occasion to read it?

A. Yes, I did.

Q. In the second paragraph of the article, which is Exhibit 385, Mr. Taylor writes: "Here in Morpheus' private matrix, music files are free, easy

to find, superfast to download."
You see that?
A. I do see that.
Q. And then later, on Page 2 of 4 of this exhibit, at the end of the paragraph that begins "Enter Morpheus," Mr. Taylor writes "Were they music files? There's no way to tell. All I know is I've never been able to cross songs off my must-have list this fast."
Do you see that?
A. I do see that.
MR. KENDALL: Then I'd like to mark as

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Exhibit 396 the second article cited in the media kit. This is the USA Today article by Jefferson Graham, dated July 12, 2001
(Marked Exhibit 386)
By Mr. Kendall:
Q. And it is headlined - - and this is quoted in the media kit - - "As Napster Shuts, Others Carry the Tune." Do you see that?
A. Yes.
Q. And in the - - this article begins, does it not: "For nearly two weeks, file trading on song swap service Napster has been halted, as the firm prepares to make the transition to a paid subscription service. The upshot: Millions are fleeing to other free music services. . . ."
And that goes on. Do you see that?
A. I do.
Q. Then on Page 2 of this article, about a third of the way up, do you see the paragraph that says: "But computer users trading copyrighted songs

without pay remains a thorny problem, and there's little evidence that the pace is slowing down."
Do you see that paragraph?
A. Yes, sir, I do.

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Q. Do you know for a fiscal year ending 2001, December 31, 2001, what the gross revenues were of the company, sir?
A. I do.
Q. What were they, please?
A. Approximately 1.8 million, give or take 200,000, I believe it should be 1.6. I'm not. . . .
Q. What was the source of those revenues, sir?
A. Advertising.
Q. Did it all come from advertising?
A. I believe so, yes. It would be under -- anything else would be under a hundred thousand dollars, so I don't think so in substance.

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Has any Morpheus version of the ones we've talked about - -
First of all, I take it we've talked now about all of the versions of Morpheus? And by that I mean the proposed streaming, the OpenNap, FastTrack, and now the current version.
Has any of those had any way to filter or block any content in any way?
A. The - - well, first of all, I just want to clarify one thing you've said in your question, is that Morpheus - - as you said all the different

products, Morpheus in the pre-OpenNap business models

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that we engaged in, primarily Infinite Music and MusicCity, Morpheus was not a glimmer in our thoughts until the November 20, 2000 business meeting.

So the OpenNap architecture, the alpha I called it, and then the subsequent beta, which became FastTrack, and the first time we used the Morpheus name, the FastTrack Morpheus was provided the black box we were given by FastTrack, KaZaA had added into it a filter for pornography. It had three layers, if I recall. I'll just say low, medium, and high for - - I don't remember what they were called.

The Morpheus PE and 1.9 did not have any, and the new Morpheus 2.0 has a very rudimentary adult content or any filter based on what words the consumer would type into the setup. And it would filter anything that the consumer would type into it. It's my understanding. I've not tried it and not seen it in operation, since it's a fairly new release, but I do know that's in that 2.0.

So OpenNap, nothing; FastTrack a pornography filter high, medium and whatever, low; PE nothing; 1.9, nothing; 2.0, a limited pornography filter, or any filter based on words that the user would type in.

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Deposition of
Darrell Smith
August 27, 2002

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Q. Well, I intend to include all applications beginning with and including MusicCity's OpenNap application through the present day.

A. Can you please just reask the question?

Q. Sure. With that clarification, what steps, if any, has MusicCity taken to prevent its users from engaging in the unauthorized trading of copyrighted works?

MR. BAKER: One other objection too, I'm sorry. It assumes facts not into evidence.

Go ahead.

THE WITNESS: Okay. I will start it with OpenNap.

With OpenNap we would basically receive takedown notices for specific file names. We would then take those file names and add those to the OpenNap software's filtering mechanism that would then basically block that particular file name from being seen.

And if you like I can go on.

By Mr. Fabrizio:

Q. Let me --

A. Okay.

Q. With respect to OpenNap, is that all you did?

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A. That's correct.

Q. Nothing further?
A. No.
Q. When you say you added the file name to OpenNap's filtering system, and that would block that file name if it appeared in exact form as you added it?
A. That's correct.
Q. If one letter or digit was off it would not be -- the file would not be blocked?
A. I am not positive because that was not tried.
Q. Will you continue for the Morpheus/FastTrack platform?
A. Okay. As far as the Morpheus/FastTrack, the process we would go through is we would basically, instead of getting the file names to block, we basically got user names that we were instructed to take out of the system. We would basically log into our main servers and would basically do a search or a query on that particular user and then delete them out of the user database.
Q. Can you explain how that would work in a technical sense?
A. When -- in a technical sense what would

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then occur is by the user's name being pulled out of the database the next time that user would try using their software, they would basically get a message, and I do not recall the exact message, but a message indicating that their name cannot be found.
Q. Based on that would the user be able to connect to the network?
A. At that point the user would not be able

to connect to our servers in order to get their user name assigned to them, but over a specific -- over an undetermined period of time that user would be able to connect into the network.
Q. Can you explain what that means?
A. Okay. One of the things that the user would be able to do is they would basically be able to -- somewhere in the application there's a button that, as I recall, says Add New User or Create New User Account or Name. And they would basically be able to go into that dialog, retype in an additional -- basically another screen name and whatever password of their choosing, and the system would basically add that new name to the database and then they would be able to reconnect to the network.
Q. So I understand this correctly to mean that the blocking was done based exclusively on the

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user's screen name and not based on the user's IP address or the user's computer or any other identifying characteristics?
A. That's correct.
Q. And the Morpheus/FastTrack client application itself contained a function that allowed users to simply change their user name?
A. Yes, it did.
Q. How did you determine which users to block in this matter?
A. It was based upon a list of user names that we would receive, and originally that list was on paper and eventually we received it through electronic medium as far as CD-ROM.
Q. From whom did you receive the list?

A. I received it from my counsel at the time, Andrew Bridges.
Q. Do you know on what basis Mr. Bridges gave you those names to block?
MR. BAKER: I'm going to instruct the witness not to answer that to the extent it discloses attorney-client communication.
MR. FABRIZIO: I would offer, Charles, that in this context it appears that Mr. Bridges was playing a role in the functioning of the business and

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that it can't be attorney-client if Mr. Bridges is giving the chief technology officer of MusicCity information and Mr. Smith is taking that information and acting in a business capacity with it.
MR. BAKER: Well, I understand. Mr. Bridges was always outside counsel at this point in time, I believe, he's always been outside counsel.
And what I'm just concerned with is any communications Mr. Bridges had to Mr. Smith regarding what to do or anything else is still couched in the attorney-client privilege, and I'm just unsure of this at this point so I'll just caution the witness not to disclose any of those communications.
By Mr. Fabrizio:
Q. Can you answer the question?
A. I was basically informed that StreamCast or MusicCity would basically -- has received notices, if I'm correct, from the RIAA, and we were basically being requested to take individual users out of the system.
Q. How many times did you do this?
A. The exact number of times I do not

recall.
Q. More than once?
A. Yes.

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Q. Can you approximate a frequency?
A. The frequency, approximately once a week.
Q. Can you give me a sense of the volume of names that was on this list by the end of MusicCity's use of the FastTrack system?
A. I can't be exact, but I think it was in the area of over a hundred thousand.

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document if we're in the middle of a document, but other than that, at your convenience.
A. (Nods head up and down)
Q. There came a time when MusicCity operated an OpenNap system; is that correct?
MR. BAKER: Objection to the word 'operated.' It's vague and ambiguous.
To the extent you can answer it go ahead, Mr. Smith.
THE WITNESS: Can you be more specific as far as the definition of 'system'?
By Mr. Fabrizio:
Q. How would you define 'system'?
A. I would say a system would basically be a collection of interactions between user software and some form of a server to create a system.
Q. Okay. You've heard of the term 'OpenNap'?
A. Yes, I have.

Q. What is 'OpenNap'?
A. OpenNap is a piece of open-sourced software. It basically allows for a directory of file names and a chat system for users to be able to communicate with one another via various applications that were -- client applications that were created

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out in the market place. So OpenNap is basically a piece of software that works and runs on a server, allowing those users to communicate with each other through software that they received through third parties.
Q. You understand that there is some relationship between OpenNap and Napster, do you not?
A. As far as I know there's no relationship between the open source community and the company Napster.
Q. In relationship in the servers offered by Napster and the servers provided in the use of an OpenNap application as you've described?
A. Can you reask the question, please?
Q. Sure. What is your understanding of the OpenNap application as you've been described and the working of the Napster system?
MR. BAKER: Objection to the extent it calls for speculation.
You can answer.
THE WITNESS: I'm not positive on the overall goals of the Napster system, but the OpenNap system was basically software that the creators created for the purpose of being able to communicate in chat rooms with one another, and if those

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individuals wanted to be able to share documents among themselves of any form or kind, basically, they could then do that, utilizing the software.
By Mr. Fabrizio:
Q. The OpenNap system allowed for the sharing of files other than music files?
MR. BAKER: Object to the question to the extent it's vague with respect to 'system.'
Other than that, you can answer.
MR. FABRIZIO: You can have a standing objection to that all day. I'm going to use the term all day.
MR. BAKER: All right.
THE WITNESS: The OpenNap system was basically designed for indexing any form of document that individual users wanted. It was pretty much not specific to any file type or digital piece of entity.
By Mr. Fabrizio:
Q. And can you describe for us the OpenNap system that MusicCity operated?
A. It basically was exactly how it was created in the OpenNap realm. We did no major -- no modifications to that system as it stood, which basically it meant that an individual would be able to connect into one of the OpenNap servers that we

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ran and that user would then be able to go into a chat room and communicate with other users, using whatever software they chose to use which was not OpenNap software.
And then they would be able to -- let's

say that I have a research paper that I've created, and I'm talking in a chat room. I would then be able to tell anyone in that chat room that I have the paper, this is the name of that paper, and in most cases they would be able to find it.

Q. Was there a way of identifying files other than through chat room?

A. Yes, there is.

Q. Can you describe that for us?

A. The user would then utilize -- utilizing the third-party software applications that we were not involved in, most of them allowed for some form of an query mechanism; I am not familiar with all of them.

But that query mechanism would basically send a request into our servers to basically search an index to determine if there were any matches on that stream, or matches on that name or variations.

Q. You said the search would be conducted on MusicCity servers?

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A. That's correct.

Q. How did that work?

A. The individual user would type a query into their client application on their computer. That query would then go into our server. It would be compared against a database and then they would then -- then they would then get a search return, or what we call a query hit, that would basically give information as in user name and the approximate size of the piece, of content, and also the name.

Q. The database that resided on MusicCity servers, what did that consist of?

A. To the best of my knowledge -- and I didn't know 100 percent of all the information kept in that database because we didn't completely dissect the OpenNap application -- but the primary item that was in that database was basically file names, and those file names were then associated with a user name.

Q. Where did the file names that were in the database come from?

A. They were transmitted from the users using third-party software.

Q. Is it the case that when users connected to the MusicCity servers they transmitted a list of

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files they were prepared to trade to the MusicCity servers?

A. They would then report a list of file names to the system.

Q. So upon connecting to the MusicCity servers, users would transmit a list of file names that they were prepared to trade to the MusicCity servers; is that correct?

A. Partially.

File names that they would basically allow to be -- they were basically -- they would -- the -- the server would basically contain the various file names so upon them connecting, those file names were transferred onto the MusicCity server that could then be queried against other users, and then from that point, once that -- if a user is looking for a particular name and they found that name, the server would then give the user that's looking for the same -- let me take it --

Can I go back to the beginning?
Q. Sure.
A. Because it's getting a little crazy for as far as how I'm explaining it.
Let's say User A wants to connect into the system. That user, basically using a third-party

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piece of software, would connect into the system. Their file names on their system using third-party software would then transfer to MusicCity servers.
Let's say that now User B wants to search on that file or search on anything that might be there. They would basically go through the exact same process and the MusicCity server would basically allow them to find the various file names.
Upon anyone wanting to transfer any data, that would then basically communicate not between our machines but from the -- from User A's machine directly to User B's machine.
Q. If there were no users connected to the MusicCity servers would the MusicCity servers contain any listing of file names?
A. No, it would not.
Q. So the only file names in the directories housed on the user MusicCity servers were those file names from the users that were connected?
A. Yes. If a user was not connected, file names did not exist because the names never existed on the hard drive, they were only live physically in memory.
Q. And MusicCity owned all of the servers that users connected to, and that housed the

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directories that we've been discussing?
A. That is correct.
Q. Did MusicCity offer any actual files themselves to the users that connected?
A. No, they did not.
Q. To your knowledge did any employees of MusicCity offer any files through the use of the MusicCity OpenNap?
A. No, they did not.
Q. You personally did not?
A. No.
Q. You mentioned third-party software. Can you explain what you meant by that?
A. Okay. There were various individuals around the world that basically created applications that were compatible with OpenNap that basically allowed users to have a user interface for submitting a list of files and chatting within the chat rooms on OpenNap servers.
Q. So that would be third-party client applications?
A. That is correct.
Q. Did MusicCity ever create a client application for its OpenNap system?
A. No, they did not.

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Q. Did MusicCity ever distribute a client application for its OpenNap system?
A. MusicCity -- I think MusicCity in those days rebranded an application from a company called File Navigator.

Q. What does it mean to brand an application from File Navigator?
A. It means that the name was changed on the application to another name, but the actual application was never licensed. The license of the application stayed with the owner of File Navigator.
Q. And what was the name that was put on the client application?
A. I don't remember, but I think it might have been called File Share.
Q. And did MusicCity distribute the client application that may have been called File Share?
A. Off of MusicCity servers, no.
Q. But that wasn't my question.
Did it distribute it in any way?
A. I remember MusicCity advertising the application, but I do not remember in any form of detail if MusicCity actually distributed the application.
Q. How did MusicCity attract users to its

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OpenNap system as opposed to the various other OpenNap systems?
A. MusicCity did not.
Q. How did users learn of the existence of the MusicCity OpenNap system?
MR. BAKER: Objection to the extent it calls for speculation on what others have knowledge of.
To the extent you can answer that, go ahead.
THE WITNESS: I am not positive, but I am going to assume that most users heard about MusicCity

through word of mouth and eventually through the press.
Q. Did MusicCity take any affirmative steps whatsoever to try to attract users to its OpenNap system?
A. At times they did.
Q. What were those?
A. Advertising to users that were connected into other OpenNap servers.
Q. What form of advertising?
A. Banner ads.
Q. Is that it?
A. That's all that I was aware of.

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Q. Did you also advertise to users that were connected to the Napster system?
A. No, they did not.
Q. All right. We'll come back to that.
Let me --
(Off-the-record discussion)
MR. FABRIZIO: Let me mark three documents so we can deal with them together. I believe the next number in line is Exhibit 145. So document with ID number 171303, purporting to be an e-mail with attachment from Michael Weiss to Darrell Smith, dated January 5, 2001, will be Exhibit 145.
(Marked Exhibit 145)
MR. FABRIZIO: Exhibit 146 will be Document ID169022 purporting to be an e-mail with attachment from Ms. Schafer to, I believe, Darrell Smith, dated January 6, 2001.
(Marked Exhibit 146)
MR. FABRIZIO: And Exhibit 147 will be

Document ID171464 which is an e-mail from Mr. Weiss, showing a copy to Darrell Smith, dated January 26, 2001.

(Marked Exhibit 147)

MR. FABRIZIO: Are you going to hand them to the witness?

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By Mr. Fabrizio:

Q. Mr. Smith, please take a look at these documents and let me know when you --

MR. BAKER: Do you have an extra copy?

MR. FABRIZIO: We do actually. I don't know if I have enough for everybody.

MR. GARFIELD: We can share.

MR. FABRIZIO: I'll pass this one down here.

THE WITNESS: (The witness reviews the documents.)

Okay. I'm ready.

By Mr. Fabrizio:

Q. Turn to the document that is Exhibit 145.

A. Okay.

Q. Can you tell us what this document is?

A. This is a document written by Mike Weiss, being sent out to MusicCity board members or a specific MusicCity board member, Bill Collin.

Q. And you were a recipient of this e-mail and the attachment?

A. Yes.

Q. Okay. And if you'd look at 146. Can you tell us what this document is?

A. This is a document from Margo Schafer to

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myself based upon an e-mail that she got from Mike Weiss, indicating some changes or some ideas that he wanted from her for the MusicCity website.

Q. So the attachment was intended to be text on the MusicCity website?

A. That is correct.

Q. If you look at No. 147?

A. Okay.

Q. Can you tell us what this document is?

A. This is a document that was going through the process and procedure on how to do banner advertisements to the OpenNap community.

Q. And you were a copy recipient of this document?

A. That's correct.

Q. Okay. Are these -- are each of these documents, 145, 146, and 147 documents that you received and retained in the regular course of your business for MusicCity?

A. That is correct.

Q. Can you to turn to Document 145 again? And the last page of the attachment.

A. Okay.

Q. There is a statement beginning at the second paragraph: 'We have put this network in place

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so that when Napster pulls the plug on their free service, parenthesis, or if the Court orders them shut down prior to that, close parenthesis, we will be positioned to capture the flood of their 32 million users that will be actively looking for an

alternative.'
Do you see that?
A. Yes, I do.
Q. What is the network that is referred to in that sentence?
A. Actually I'm not sure what Mike meant by the 'network' because there's lots of things in this document that are inaccurate and incorrect.
Q. From the context does the 'network' refer to the OpenNap system?
A. I would believe so.
Q. In fact, the title of the document is a 'Recap for MusicCity's OpenNap Alternative Network'; is that correct?
A. That's what his document states.
Q. Okay. There's no question in your mind that when he refers to the 'network' in that context he's referring to the OpenNap system, is there?
MR. BAKER: Object to the form of the question. Asks for speculation.

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THE WITNESS: I would assume that that's what he's talking about.
By Mr. Fabrizio:
Q. And was that a true statement at the time, that at least one of the reasons the OpenNap network was in place was so that when Napster pulled the plug on their free service or if the Court shut them down prior to that MusicCity would be positioned to capture the flood of their 32 million users that would be actively looking for an alternative?
A. That is -- actually, could you just repeat that question again?

MR. FABRIZIO: Can you repeat that, please?
(The requested testimony was read by the court reporter.)
THE WITNESS: As far as the business intent of MusicCity, I'm not positive. As far as the technical reasons why we were running OpenNap, that, I can answer.
By Mr. Fabrizio:
Q. Why don't you answer for the technical reasons.
A. The technical reason is we deployed the OpenNap servers for the purpose of deploying an

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application or a client application that we were creating that was called Morpheus, and OpenNap was the most efficient way for us to be able to, in the course of chat rooms, deploy that application and allow users to test it in an -- in an alpha test form to see if they liked it and then we would ultimately use that as a new distribution channel for the application.
Q. So you considered your OpenNap system an alpha network for the ultimate Morpheus client?
A. It was not an alpha -- it was an alpha distribution channel for the Morpheus client.
Can you repeat that?
(The requested testimony was read by the court reporter.)
By Mr. Fabrizio:
Q. What does that mean?
A. It means it was an alpha test for a distribution mechanism, not for the Morpheus software

itself.
Q. And was your hope and expectation that you would attract users to the OpenNap system, that you would then be able to migrate onto the Morpheus platform?
A. The intent was users that were already

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using the OpenNap system had a certain amount of community where there was a high visibility within that community, and by running OpenNap servers allowed us to tap into that OpenNap community and have the ability to distribute and show them other applications utilizing peer to peer.
Q. Okay. And your hope was those OpenNap users would become Morpheus users?
A. Eventually, yes.
Q. Did you also believe and expect that the MusicCity OpenNap users would be drawn from a population of former Napster users?
A. It was not -- as far as I know we had -- as far as on the technical side, there was no mechanism for us to do that. But is it possible for a Napster user to connect into an OpenNap server? I believe it's possible.
Q. You seem to limit yourself to the technical side, and I don't want to -- I don't want to make that a pattern throughout the day.
You are copied on this document which is not a technical document. You're copied on document 146 which attaches a text for the MusicCity website?
A. Yes.
Q. Your function at MusicCity extends beyond

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the mere technical aspects of the business, does it not?
A. At the moment it does. At that time it did not.
Q. Why don't you look at No. 146.
A. Okay.
Q. And the attachments.
A. Okay. I see it.
Q. Does this reflect that MusicCity was attempting to attract users who had been Napster users?
A. That is highly possible.
Q. That in fact was part of the business strategy at MusicCity; namely, to attract users who had formerly been Napster users, attract those users to the OpenNap system?
A. At the time -- at this particular time in the history of MusicCity I was not involved on the business dealings, but I do know that at the time the company did not have any form of a business plan at that moment.
Q. By 'business plan' you mean a formal business plan?
A. Yes, as far as a direction of what it was doing and where it was going. Because this was

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actually going on at a time when the company was really in the direction of shutting down.
Q. Why was the company in a direction of shutting down?
A. No financing.

Q. And was the deployment of an OpenNap system an attempt to attract investors?
A. No, it was not.
Q. Was the presence of MusicCity's OpenNap system something that MusicCity touted to investors in an attempt to get financing?
A. That, I'm not familiar with because any of the meetings that they were having with investors, I was not a part of the various meetings that they were having.
Q. Did anyone within MusicCity ever say to you that the OpenNap system would be used to attempt to attract investors or gain financing?
A. As far as attracting investors or financing, no one in the company mentioned that to me.
Q. And you have no understanding that that was part of the purpose of the OpenNap system?
A. That was not the purpose of the OpenNap system.

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Q. What was the purpose of the OpenNap system?
A. The purpose of the OpenNap system was to create a new distribution channel for the Morpheus application. It was presented to the board members the November prior to these e-mails being dated, which would have been in November of 2000.
Q. And who made that board presentation?
A. As far as on the Morpheus application, I did.
Q. Did you demonstrate an application for them?

A. Yes, I did, a prototype.
Q. And did you have any discussion with the board as to attracting users for the MusicCity OpenNap system?
A. No. No, we did not. It was not discussed at that meeting.
Q. Take a look at Exhibit 147. The e-mail specifically is on Page 3 of 4.
A. Which section?
Q. About halfway down the page it appears to be an e-mail from you to server on that, dated January 13, 2001, it begins Hi Joel. Do you see that?

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A. Uh-huh.
Q. There you tell Joel -- who is Joel?
A. He's the writer of File Navigator and the owner of the company.
Q. And what is Joel's last name?
A. I do not remember.
Q. Okay.
A. If it's not on here somewhere.
Q. That's fine.
A. Okay.
Q. You write --
A. And I can explain -- you want me to --
Q. I will ask a question.
You write: I am increasing my servers and bandwidth in preparation of Napster pulling the plug, close quote.
What did you mean by that?
A. What I meant by that, one of the things I was experiencing on the technical side that was

becoming real daunting to the company, is individuals through chat rooms and other mechanisms would find out about our servers. Every time that occurred we would basically have what I would call a meltdown in our data center that would cause us major havoc and days without sleep.

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So what this was in regards to was the potential of having our users have a disruptive experience based upon activities that might have been happening with Napster.

Q. You had a meltdown of your servers because too many users were trying to access them at the same time?

A. Users that were not our normal users. We basically had provisions for a specific amount of MusicCity quote, unquote, OpenNap users, and there were times when we would basically get flooded from various things happening in the world that would then cause our servers to crash.

Q. Other than the technical difficulties that created for you, that was a good thing from a business perspective, to have more users, was it not?

A. Not necessarily because there was no way of monetizing those users because the way of monetizing the users would have been selling the Morpheus software which was not complete at the time.

Q. When you say, 'I'm increasing my servers and bandwidth in preparation of Napster pulling the plug,' what did you mean 'of Napster pulling the plug'?

A. That was an assumption on my part. As

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chief tech officer of the company I'm supposed to basically be prepared and keep the company prepared in case there's anything that can disrupt our current direction and things we're currently working on on a technical side.

Q. But what did you mean when you said 'Napster pulling the plug'? What did you think Napster was going to do?

A. Meaning that some people had the ability of taking Napster clients and hacking those clients to basically allow them to connect into other networks. And I was worried about the fact that if there was ever some type of a disruption with that organization it would possibly, without our control, cause an overload on our servers.

Q. Disruption in the sense of Napster shutting down its servers or being ordered by a court to shut down servers?

A. Potentially, yes, which would then cause us to shut down.

Q. Why would that cause you to shut down?

A. Because if there was anything that was to occur or happen with Napster, then through other applications that we did not have control over, some of those users would potentially hit our servers,

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causing them to crash because Napster, at the time their server base was in essence 20 plus times larger than ours.

Q. And your expectation was if Napster shut down their service for whatever reason some portion

of those users would try to connect to your servers, causing technical problems?
A. That is correct.
Q. Can you go back to Exhibit 145?
MR. BAKER: Steve, by the way, when it would be a good chance to take a break?
MR. FABRIZIO: I will be in a few minutes. That will be a good time.
THE WITNESS: Okay. I have the document.
By Mr. Fabrizio:
Q. In the third paragraph?
A. First page?
Q. I'm sorry, the last page of the attachment. Sorry about that.
A. Okay.
Q. Mr. Weiss writes: 'It was always our intent to use our alternative Napster network,' and that goes on. And then it refers to StreamCast Morpheus interface. At this point in time what was the StreamCast/Morpheus interface?

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A. The Morpheus interface was an application that would basically allow an individual to be able to have a communication application on their desk-top. An example, e-mail. That application would have the ability to morph into other applications, like one moment it could be e-mail, the next moment it could be a word processor, where the user wouldn't have to go and click on individual applications, it would kind of like be, I guess you could say for lack of a better term, an UBR application where we would basically be able to stream multiple what we call cast members into a user space.

So an example, I could basically have a word processor, but then if I needed e-mail functionality in that word processor, that information would then stream into the application, thus morphing the application into various things, whether they were communication-oriented or game-oriented.
Q. Is that something MusicCity is still working on?
A. That is correct.
Q. And if I understand you correctly from your earlier testimony, your plan was from the outset was to use the OpenNap system to promote this

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Morpheus interface?
A. That is correct.
Q. And to help you quickly capture a significant user database for this Morpheus interface?
A. As far as the using the OpenNap servers; that is correct.
Q. And the second-to-last paragraph there is a sentence that says --
A. This is on the last page?
Q. Again, the last page, yes. 'We believe that' -- I'm sorry. 'We believe at the very least that macro-media opened our eyes to a very unique void in the marketplace that we can fill.'
Do you see that?
A. Yes, I do.
Q. What was the very unique void in the marketplace that MusicCity could fill?
A. I have no idea what Mike Weiss is talking

about there.
Q. If you'll go to the first page of this document, 145, the covering e-mail, in the second paragraph Mr. Weiss writes to you: 'Last month we discussed our plans to tap into the Napster community of 32 million users, but none of us expected to see

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such dramatic results in so short a time.'
Was it in fact the case that MusicCity was successful in tapping into the Napster community of 32 million users?
A. No, it was not.
Q. Why do you say it was not?
A. Because from hearsay through what I saw in the press over time, the Napster users continued to use Napster throughout issues that were taking place in the Napster arena, and I am not positive, but I even think Napster was still functioning even when we were engaged with conversations and dealings with FastTrack.
Q. What was the growth of your OpenNap alternative network in this time frame?
A. Time frame between what date range?
Q. In the early 2001 time frame.
A. The growth was extremely high volume, and it was larger than what we were -- it was larger than what we were expecting and larger than what we wanted.
Q. And is it your belief that those -- that that growth -- strike that.
Is it your belief that those users came predominantly from the OpenNap community?

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A. That, I have -- I honestly have no idea where the bulk of them actually originated from. I have an understanding of third parties pushing MusicCity, but not where the bulk of them came from.
MR. FABRIZIO: All right. Why don't we take that break now.
MR. BAKER: Okay.
THE VIDEOGRAPHER: We're going off the record. The time is 10:52 a.m.
(Recess, 10:52 a.m. to 11:14 a.m.)
THE VIDEOGRAPHER: The time is 11:14 a.m., and we are back on the record.
By Mr. Fabrizio:
Q. Mr. Smith, I want to go back to something you mentioned earlier. You referred to the regular Napster client application, I believe you testified that it could not connect directly to the MusicCity OpenNap system without some modification. Is that correct?
A. Yes.
Q. What is Navigator?
A. It's an application run by some guys in San Francisco, or created by some individuals in San Francisco, as far as I recall.
Q. And it's your -- strike that.

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Is it your understanding that Navigator offered a plug-in to the regular Napster client that would allow users of that regular Napster client to connect to MusicCity's OpenNap?
A. I don't believe they -- I don't believe

that's correct.
Q. Did MusicCity ever offer for download from its MusicCity.com website a Navigator plug-in?
A. I am not positive -- I don't -- it's been awhile, I don't recall, but it's possible that Navigator could have been mentioned on the website.
Q. The question is whether you actually had a piece of software from Navigator that you allowed people to download from the MusicCity.com website.
A. I don't believe so.
Q. Do you recall whether you had a link to Navigator from the MusicCity.com website?
A. I don't recall, but it's possible.
Q. And did MusicCity take steps to have its OpenNap system listed on Navigator?
A. Yes.
Q. What was the purpose of that?
A. In order for OpenNap users to basically be able to see the MusicCity servers.
Q. What do you mean 'see' the MusicCity

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servers?
A. To basically be able to find the MusicCity servers.
MR. FABRIZIO: Okay. Let me hand you what we've marked during the break as Exhibit 148.
(Marked Exhibit 148)
By Mr. Fabrizio:
Q. It's a thick document, a presentation document. I will tell you -- obviously you can glance through the entire document, but I will refer you to a couple of particular pages I just want to ask you a couple of questions on. One of them is, if

you look at the bottom you'll see that there's an ID number and then 265960, and then there's a point and then there are numbers?
A. Yes.
MR. FABRIZIO: So if you look at .19, .21, those are the two pages I will have substantive questions. And if you look at .8, I will refer you to that page to see if that helps you put a date into perspective.
And while the witness is reviewing it I'll note for the record that we've marked as Exhibit 148 a document with ID No. 265960. The first page has a heading, 'A division of StreamCast Networks.'

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THE WITNESS: (The witness reviews the documents.)
You said .19 and .21?
Q. .19 and .21, yes.
A. Okay. Okay. I'm ready.
Q. Okay. Can you tell us what this document, No. 148, is?
A. I'm not positive, but I'm assuming it's a PowerPoint presentation.
Q. Okay. If you look at Page .8 --
A. Okay.
Q. -- there is a date of January 3rd listed as launch date, and then it says "42 days ago."
A. Okay.
Q. Does that help put into context for you the date of this document?
A. Yes.
Q. What is the approximate date of this document?

MR. BAKER: I'm going to object to the question.
To the extent you understand or you know what date this document is, that's fine, but I think --
He may be speculating. To that extent

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I'm going to object.
THE WITNESS: Yeah, the exact date of this document I have no idea because I can't just go by what's on the presentation slide.
By Mr. Fabrizio:
Q. Can you give us an approximate date of this document?
A. I would say approximately in the March time frame.
Q. Of 2001?
A. Yeah, March, late February.
Q. If you'll look at Page .19.
A. Okay. I'm there.
Q. Up at the top, the very top it says, "Mike and Darrell, add dates."
The Darrell referred to there is you, Mr. Smith, correct?
A. I am assuming so.
Q. Okay. Did you receive this document in the regular course of your business at MusicCity?
A. I don't recall going through this document. There's a high probability that this could have been sent to me because I received lots of documents from Mike Weiss, all of which I did not necessarily have time to go through unless it was an

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emergency.
Q. A busy time?
A. (Nods head up and down)
Q. Did you receive PowerPoint presentations similar to this one?
A. Yes.
Q. You'll see under the bullet Quick Search it says, quote: Simplify searches by tying into the Muse database and provide enhanced albums/songs/artist/artwork info, paren, rid hassle of Napsteresque cryptic files, close paren and close quote.
Do you see that?
A. Yes, I do.
Q. What does this refer to?
A. I'm not positive -- it's some type of functionality typed in here by the creator of the document. It was not part of anything that I was working on.
Q. Do you know what the Muse database is?
A. Yes, I do.
Q. What is it?
A. It's a database by a company called Muse that basically catalogs albums and artist artwork as far as the jewel case, and in some cases I think you

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can reference catalog numbers that you can reference to stores where you could purchase the music also.
Q. How would tie-in to the Muse database simplify searches?
A. I'm not positive. I have no idea because

that was something that, as far as I know, the company never did.

Q. Did you do any investigation of the Muse database and potentially tying into the Muse database?

A. In regards to OpenNap and peer to peer, no, I did not.

Q. With respect to any of the business plans that MusicCity considered?

A. Yes.

Q. Which ones?

A. The streaming radio stations. Back in the first year I was working with the company.

Q. What year was that?

A. It would have been -- let me get my dates straight here.

If I recall, that would have been like April of 2000.

Q. In the context of streaming how did you consider tying into the Muse database?

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A. That was the way of getting additional information like who were the session players and what did the album art look like for a particular CD or album.

Q. Technically how would it work? How would you tie into the Muse database?

A. If an audio radio broadcast or streaming radio stream is created for X number of songs, as the individual user is listening to the content, they would be able to see the album cover for that song and to get themselves more familiar with what that looks like, because some people like the album art.

Q. And that information would come from the Muse database to the user as that user was listening to the stream?

A. I believe that's what they were thinking of doing.

Q. How would the Muse database know what information to send the user?

A. That would be based upon another database that would basically have the play list that would generate for that station.

Q. So somewhere in the application that the user was using a play list would be created, correct?

A. In the application for the streaming

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audio that the company was working on that never went into the public space.

Q. But that play list or those songs that the user wanted to listen to would be communicated to the Muse database in some fashion?

A. It would be communicated from whatever application the user was communicating with to a MusicCity database which would then cross-reference the Muse database.

Q. Okay. So the user's play list would be communicated to a MusicCity database and MusicCity database would cross-reference that play list against a Muse database; is that correct?

A. That's correct.

Q. And then as a result the Muse database would send information to the user as the user was listening to the stream?

A. It would send it back to the MusicCity database and then to the user.

Q. And this would all happen relatively instantaneously?
A. That was -- that was the original goal.
Q. What did you understand the expression "the hassle of Napsteresque cryptic files" to mean?
A. Since I was not involved in this item

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that's on here called Quick Search, I am not completely positive.
Q. Did MusicCity have a function known as Quick Search in their OpenNap system?
A. No, it did not. Because MusicCity had a server application called OpenNap that did not have functions for the users. The users supplied their own software.
Q. At the top of this page where it refers to "Morpheus interface functions for MusicCity client," what is the MusicCity client it refers to?
A. I have no idea because at that point in time there was no Morpheus interface that did any of these things that are listed here.
Q. With respect to any of its peer-to-peer applications did MusicCity ever consider tying into the Muse database?
A. For peer to peer there were times as far as -- yes, it did.
Q. Can you describe those?
A. See, let me think back. It's been awhile.
Okay. What the Muse database was going to be for, or one of the things it could have been used for, is if an individual wanted to basically buy

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a particular song from a vendor, let's say Best Buy. The Muse database would then be used to -- like I had mentioned before, to show the album art for that particular album that they're trying to purchase.
Q. Okay. What platform, what peer-to-peer platform did you consider tying into the Muse database for?
A. Actually no peer-to-peer platform. This would be something that would be done with a web browser.
Q. The web browser that is contained within the client application?
A. That's correct.
Q. Okay. So for which client application did you consider tying into the Muse database?
A. No client application. But the web browser, that would be tied to the Muse database, potentially was the KaZaA application.
Q. KaZaA. Let me understand the distinction because I'm confused, and I suspect if I am, the Court may be too.
Within the Morpheus/FastTrack client application there is -- a portion of it that is a web browser that receives content directly from the MusicCity website; is that correct?

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A. Yes, a major portion of the interface for that application is Microsoft's Internet Explorer.
Q. When I refer to the MusicCity FastTrack client application I'm referring to the entire application --

A. Yes.
Q. -- both -- which includes this -- the web browser portion. Is that how you would also refer to it?
A. I would -- not necessarily -- I would -- myself I wouldn't as far as the user experience, that's what the user is seeing. But there were three distinct applications that were encompassed in one UI.
Q. UI being user interface?
A. Yes.
Q. One was the web browser?
A. One was Microsoft Internet Explorer, the other was Microsoft's Media Player, and then the third of the triangle was the peer-to-peer stack which was the Morpheus/KaZaA interface.
Q. Okay. And when the -- when a user of the MusicCity FastTrack application launched the application it had access to all three of these functionalities from within the client application,

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same client application; is that correct?
A. Correct.
Q. Okay. So the record is clear, it was with the MusicCity FastTrack client application that you considered tying into the Muse database; is that correct?
A. Indirectly. It would tie into a database we would have on our end arranged with various potential vendors, and then that would cross-reference the Muse database for additional data.
Q. Okay. Can you explain step by step how that would have functioned?

A. Let's say hypothetically here is a scenario where let's say the vendor is Best Buy or Virgin Mega Store.
The individual basically does a query on a particular album that they might be interested in. They would then see the pricing information on that album that would then come from that vendor's database, and to enhance information like the album cover that would get pulled from the Muse database.
Q. All right. So the user would enter a query in the P2P stack?
A. No. That would be a query in the Microsoft web browser, in IE.

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Q. So the user would enter a query in the Internet Explorer portion of the client application?
A. That's correct.
Q. That would communicate to MusicCity servers?
A. Yes.
Q. And MusicCity servers would relay that search query or somehow cross-reference that search query to the Muse database?
A. It would be cross-referenced with a database from one of the vendors. Like an example, let's say Best Buy was a vendor, if there were a vendor. It would be cross-referenced with their database against the Muse database to pull up the album cover.
Q. My apologies for being slow on this.
A. Okay.
Q. I'm not understanding how the Muse database relates to this process. Can you --

A. The Muse database cross -- would be -- is -- it's not done that way today, bu. at the time most of the vendors did not have album art for a particular piece of content and the Muse database did.

Q. Okay. I think I understand it now.

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The user would enter a search query in the Internet Explorer portion of the Morpheus/ FastTrack client application. That would send a signal to a MusicCity server which would relay that signal to a particular vendor --

A. That's correct.

Q. -- and that vendor would relay that signal or communicate that query to the Muse database, and as a result, the Muse database would send information back to the user?

A. Almost. It would send the information back to the MusicCity servers which would then relay it to the user.

Q. Okay. And this would happen all relatively instantaneously?

A. Yeah, fairly.

Q. This is not a functionality MusicCity ever incorporated into the Morpheus/FastTrack client application?

A. That is correct. It was a functionality that was never added or built.

Q. Why?

A. There was no time and it was basically just forgotten about.

* * * *

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* * * *

Q. All right. Now let's turn to Exhibit No. 150.

(Marked Exhibit 150)

By Mr. Fabrizio:

Q. Can you tell us what this document is?

A. This is an e-mail from myself to Janus who is a member of KaZaA.

Q. Okay. It seems to be a series of e-mails

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back and forth between you and Mr. Friis?

A. I guess the best way of describing this, it was first contact.

Q. Okay, great. And is this a document I guess you sent and received and maintained in the normal conduct of your business at MusicCity?

A. Yes, it is.

Q. Okay. Now, I have noticed that Mr. Friis has a habit of not attaching your full message when he replies but only attaching portions of it?

A. Yes, he had a habit of doing that. It made life a pain in the butt for me.

Q. For me too.

Let's just turn to the back of the document and work forward chronologically.

A. Okay.

Q. At the very last page, actually the page before, it begins "Dear Janus." And then there's a statement that begins with "I'm with a company called StreamCast," and it goes on, and "Darrell Smith" is at the end. Does that reflect an e-mail that you sent Mr. Friis?

A. That is correct.

Q. And that was your first contact with KaZaA?

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A. Yes.
Q. And then if you'd look at what is noted as Page 2 of 4 at the top?
A. I see it.
Q. Okay. Down at the second half of the page there is a statement that says, quote: I like the fact that kazaalib allows for a fully distributed network, however, can it be centrally monitored for activity and performance?
Does that reflect a portion of an e-mail that you had sent Mr. Friis --
A. Yes, it does.
Q. -- on or about February 27, 2001?
A. Yes.
Q. What did Mr. Friis reply?
A. His reply is the first page.
Q. Is part of his reply not immediately below the sentence I just quoted to you? There is a sentence or two that reads: "The performance can definitely be monitored centrally. We have quite a good overview of the state of our network at any given time in terms of activity, but," it says "ate", but I believe it means to say -- "are" you referring to specifically question mark?
A. Sorry about that. Yeah.

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Q. Was that the beginning of Mr. Friis' response to your message?

A. Yes, it is.
Q. So at this point in time, in February of 2001, you understood that the FastTrack system could be monitored centrally and that you could have a good overview of the state of the network at any given time?
MR. BAKER: I'm going to object to the form of the question.
I believe you're leaving out just one important term here, maybe accidentally or otherwise, but anyway, the term performance can be monitored centrally, and that word wasn't in that question.
MR. FABRIZIO: Oh, it was unintentional.
MR. BAKER: All right.
By Mr. Fabrizio:
Q. I'll rephrase the question so we have it clear.
You understood at this point in time in February of 2001 that the FastTrack network -- that the performance could definitely be monitored centrally and that you could have a good overview of the state of the network at any given time; is that correct?

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A. That is correct.
Q. Then you go -- was that at least part of what led MusicCity to find FastTrack an attractive platform, that it was a fully distributed network that could be centrally monitored for activity and performance?
A. No, the main item for kazaalib was the fact that since it was decentralized that made it scalable.

Q. Okay. Going to the first page of this e-mail there is a sentence that reads, about halfway down, quote: The activity we want to monitor if possible are the files that users download so that we can track copyrighted material for royalties, close quote.
Do you see that?
A. Yes, I do.
Q. And does that -- is that sentence part of the e-mail that you had sent to Mr. Friis?
A. Yes, it is.
Q. You posed that question to him?
A. (Nods head up and down)
Q. I'm sorry. Strike that.
And what was Mr. Friis' reply?
A. It's immediately underneath where they

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said basically they've designed the system to potentially be able to do that, but it was not something that was implemented.
Q. Okay. But you understood as of at least March 1st, 2001, that KaZaA had designed a system that would allow you to monitor the files that users were downloading so that you could track copyrighted material?
A. That was an assumption on his part because he also had mentioned that it had not been implemented. So from -- so from Janus, what that basically meant -- and this was later on explained to me from Janus -- is that that was something that they were going to build into the software, and they had only discussed it but they never built that into the software, or at least not when they were working with

us.
Q. So at least as of March 1, 2001, you understood that KaZaA had discussed building into the software the ability to monitor files that users were downloading so that you could track copyrighted material; is that correct?
A. That's correct.
Q. You understood that they had not yet implemented that feature?

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A. Yes. That is correct.
Q. But you were told by Mr. Friis that it was something they could do quite quickly; is that correct?
A. Yes; that's correct.
Q. And did you have any reason to doubt him?
A. At the time, no, I did not.
Q. Okay. Did you ever follow up with Mr. Friis to ask him to implement that feature?
A. Yes, I did.
Q. Can you describe what happened?
A. Basically I had a communication with him via telephone on I wanted to pretty much follow up on this original e-mail and I wanted them to implement that functionality.
And at the time they basically told me that they did not have the resources at the time, they were busy doing other things and they could not implement that at the time and could possibly do it in the future, but at that moment they didn't have the resources.
Q. So you understood that was not a technological limitation but just a time constraint

on their developers?
A. That is correct.

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Q. Was part of the time constraint that MusicCity was asking them to have the Morpheus/FastTrack client application ready to go in the next few weeks?
A. No, it wasn't.
Q. Okay. It was existing obligations that were consuming their time?
A. Yes, because when I asked the time frame on -- when I was requesting that of him was a few months after we had already released the product.
Q. All right. Let me back up.
When you had this phone call with Mr. Friis and asked him about implementing the feature to monitor files that are downloaded, that was some couple of months after MusicCity had launched its Morpheus/FastTrack application?
A. That's correct.
Q. Can you put a date on it?
A. The specific date I have no idea.
Q. Perhaps a month?
A. No, I would just say approximately 45 days approximately from this original e-mail.
Q. Other than that one phone call did you ever have any further discussions with Mr. Friis about this feature that would allow you to monitor

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user downloads?
A. No, I did not.

Q. Did you ever raise it with him again?
A. The subject matter, yes, but not in -- but taking a different technical approach.
Q. Can you explain what you mean by that?
A. In conversations that we had with them, they had made mention that it was possible to block IP addresses.
Q. To block IP addresses?
A. Yes, abusers.
Q. What is the relationship between a feature that would block IP addresses and a feature that would monitor files that users are downloading?
A. In case there was anything questionable and if we ever got a takedown notice of any form because a user was using the system inappropriately we would then be able to do something about it.
Q. Okay. And that was the band user list that we talked about before?
A. Still not familiar with.
Q. Oh, that's right.
As for the feature to monitor downloads, did you have any further discussion about a feature to monitor user downloads?

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A. No, we did not.
Q. Did you ever, subsequent to your first conversation with Mr. Friis, ask him to implement the feature to monitor user downloads?
A. Outside of that second conversation that I had with him I don't recall any others. It's possible, but I don't recall any.
Q. Okay. In your first conversation Mr. Friis indicated that there might come a point in

time when he would be able to turn resources to developing that feature; isn't that correct?
A. At the time, yes.
Q. Okay. Was there a reason MusicCity never asked KaZaA to develop a feature to monitor user downloads?
A. The conversation that I had with him for monitoring what was going on, they didn't have the resources at the time, but after that, as time went on, our relationship with them got very strained where even simple things were not being implemented as far as simple requests, so we never revisited any previous requests that we made of them, or asked them for.
Q. But it's true that during the entire time MusicCity was using a Morpheus/FastTrack system, you

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understood that KaZaA could implement for you a feature to monitor user downloads to track copyrighted material?
A. If they chose to implement that.
Q. You understood that there was no technological impediment to their doing so?
A. It was -- that's correct.
Q. You understood that it was technologically possible?
A. Correct.
Q. In the first -- after the first paragraph of the e-mail, beginning with "my company wants to build"?
A. Okay.
Q. That represents a portion of an e-mail that you had sent to Mr. Friis, does it not?

A. Yes, it does.
Q. On or about March 2000?
A. (Nods head up and down)
Q. The last sentence says, quote: We currently maintain a database with information on two million songs, including album cover art, close quote.
What does that refer to?
A. The Muse database.

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Q. It did not refer to a database that was actually housed on MusicCity's own servers?
A. No, it was not.
Q. Did MusicCity have a contractual or other relationship with Muse at this point?
A. I do not know any details about the contractual agreement at that time other than the fact that I received updates from Muse on a weekly basis.
Q. Updates from Muse?
A. Uh-huh.
Q. What was the nature of the updates?
A. If they'd modified their data in any way.
Q. Did that lead you to believe that MusicCity had a relationship with Muse or had licensed its database?
A. I have no idea. I just basically would receive updates and would just take it for what it was.
Q. As you sit here today do you have any information as to whether MusicCity ever obtained a license from Muse with regard to their Muse database?
A. I have no information or knowledge of

their business dealings with Muse.
Q. Who within MusicCity would have that

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relationship?
A. At the time it would have been -- I'm not positive, but it would have been Mike Weiss, and from that point I have no idea.
MR. FABRIZIO: Bear with us one second.
(Off-the-record discussion)
MR. FABRIZIO: Let's go back on the record and let me mark two documents so maybe it will save us a little time. We're up to 151.
As Exhibit 151 we'll mark a document with ID No. 544409, and as Exhibit 152 we'll mark a document with ID No. 168144.
(Marked Exhibit 151)
(Marked Exhibit 152)
THE WITNESS: (The witness reviews the document.)
(Off-the-record discussion)
THE WITNESS: Okay.
By Mr. Fabrizio:
Q. Okay. Looking at Document 151, can you tell us what this document is?
A. It's a document with some licensing ideas with KaZaA, from Mike Weiss to myself.
Q. Do you mean between Mike Weiss and yourself? I believe it's from you to Mr. Weiss?

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A. If you read down it says, "Hello, Darrell."

Q. Yes. Then at the end of that it says "Janus."
A. Yes.
Q. Does that refer to Janus Friis?
A. Yes, it does.
Q. So that first portion would be a message that Mr. Friis sent to you?
A. And I think it most likely would have been to myself and both Mike Weiss [sic].
Q. Okay. And then at the top, for whatever reason, you're devoting the entire thread to Mr. Weiss?
A. That is correct.
Q. Okay. And looking at Exhibit 152, can you tell us what this document is.
A. This is -- this is a continuation of what started in Exhibit 151, but this one is coming directly from Niklas, the CEO of FastTrack or KaZaA.
Q. Niklas Zennstrom?
A. Yes. And he's basically outlining what the project plan would be as far as putting together the Morpheus/KaZaA client.
Q. You are shown as a copy recipient of

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Exhibit 152 too; is that correct?
A. Yes, myself and the rest of the people on his development team.
Q. Okay. And documents, Exhibits 151 and 152, are these each documents that you sent and received and maintained in the regular conduct of your business for MusicCity?
A. Yes, it is.
Q. Okay. Let's turn first to Exhibit 151.

All right. You said that the first message beginning with "Hello, Darrell" was sent by Mr. Friis, right?
A. Yes, it is.
Q. And the rest of this e-mail is also part of that e-mail from Mr. Friis to you and Mr. Weiss?
A. Yes, it is.
Q. Turn to the second-to-last page in the e-mail.
A. Okay.
Q. This one doesn't have any numbers to get us closer.
A. (Nods head up and down)
Q. It says, a couple of lines down from the top, quote: We will host and maintain the kazaaserver for you as a service, close quote.

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Do you see that?
A. Yes, I do.
Q. Okay. What was the kazaaserver?
A. That was a server that kept track of user names and passwords that were used for instant messaging within the application.
Q. The application being ultimately the Morpheus/Fasttrack client application.
A. That is correct.
Q. Is there anything else it did?
A. It gave indication whether or not the individual wanted to receive additional e-mail mailings to them, whether or not they wanted to opt in to an e-mail list.
Q. Sort of at the beginning of -- strike that.

The first time a user launches the application they would connect to the kazaaserver to register, and in the course of that registration would be able to opt into or out of additional e-mails from MusicCity?
A. Yes.
Q. Okay. Is there anything else it did?
A. It also had the ability to notify users on updates of the software when new versions would

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come out.
Q. Is that a process that became known as auto updating?
A. Yes, it is.
Q. Is there anything else the kazaaserver did?
A. It also had the ability to change some of the parameters on the client desktop.
Q. What parameters could it change on the client desktop?
A. The list of parameters we never received so the only time that we knew that there were parameters that could be changed is when they would send us e-mail messages and attachments on what they wanted us to place on that server for making changes.
Q. So during the course of your association with the FastTrack network you would from time to time receive parameters that KaZaA had asked you to make changes to?
A. That is correct.
Q. But beyond those that you were told about by KaZaA, you didn't have any information about other parameters that could be changed using kazaaserver?

A. No, we did not.
Q. Did you suspect that there were

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additional parameters that could be changed that KaZaA did not tell you about?
A. Yes, we did.
Q. Why did you suspect that?
A. Because as a developer if you add one thing to something you could have added a lot of other elements, and every time they would inform us of a change, that meant that that was the first time that we had ever heard of that change, which led us to believe that after that happened a few times, that there had to be more.
Q. I understand.
The second paragraph says, "The kazaaserver handles such tasks as new user registrations."
And it in fact did that, correct?
A. Yes, that's correct.
Q. It also says, "[redacted] handles tasks such as auto-updates."
And you've testified it in fact did that?
A. Yes.
Q. Then it says the kazaaserver handles "some network-related stuff", and then it says "connecting."
Did kazaaserver handle user connections?

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A. Not as far as we knew it did not.
Q. What did you understand it to mean when

Mr. Friis said "connecting"?
A. I am not positive what he meant there because we had had conversations after that where Niklas told us differently.
Q. Okay. And where it says, "kazaaserver handles getting list of supernodes," was that in fact correct?
A. And that was told to us by Janus which Niklas eventually told us that that was not correct.
Q. You came to understand in fact the kazaaserver did not handle the function of getting a list of supernodes?
A. Yes.
Q. Can you describe for us how the kazaaserver handled new user registrations?
A. From what we were told the user would start the Morpheus or the KaZaA application, would then get prompted with a dialog box for entering a user name, password, and an e-mail address and also a check box to opt into e-mails. That would then connect into the server, the kazaaserver, that would then get recorded into the kazaaserver database, and upon that happening, the kazaaserver would then tell

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the client to go to the next step, which was to log into the network by using one of the supernode lists that was included with the download.
Q. Okay. In the April time frame when you first began using the FastTrack system --
A. Yes.
Q. -- a list of user supernodes was not in fact downloaded with the client application, was it?
A. Yes, there was a list of 200 supernodes

that was included with the download of the application that we received from KaZaA.
Q. The first application you received from KaZaA --
A. The very first application.
Q. -- there was a list of 200?
A. Yes.
Q. Did the kazaaserver also handle the log-in process?
A. I'm not sure by the definition of "log-in process."
Q. Fair enough. How would you define the log-in process?
A. The user connecting into the user network so they can see other users.
Q. Okay.

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A. "Logging-in" being the computer at which the user -- a user connects in to establish -- where they've actually established a connection onto the network.
Q. And by that definition did the kazaaserver handle the log-in process?
A. No.
Q. Did it have anything to do with the log-in process?
A. None that I'm aware of.
Q. A first-time user, someone who has just downloaded the Morpheus/FastTrack client application, the first time that user launches the application, would that user connect the kazaaserver?
A. Yes, they would.
Q. And for what purpose would they connect

the kazaaserver?
A. In order for them to transmit a user name into the database so that person could be referred for instant messaging by the name that they gave.
Q. That's the registration process?
A. Yes, it is.
Q. Okay. Other than the registration process, that first time a new user launches the application and they connect to the kazaaserver, is

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there anything else that happens?
A. At the moment I do not believe so, but at the time, Janus said that it had -- it was involved with getting them connected to a supernode which was eventually changed as far as what we were told.
Q. Your understanding of those, that sequence of events changed?
A. Yes.
Q. Okay. An existing user who was already registered when they lost -- when they launched their Morpheus/FastTrack client application. Do they connect to kazaaserver?
A. An existing user, yes.
Q. What happens when that existing user connects to the kazaaserver?
A. They basically present their user name to the kazaaserver, the kazaaserver then looks up their name in the database, and if there's a match it tells the application to display that name in the lower right-hand corner of the screen.
Q. Does anything else happen?
A. To my knowledge -- there's one other. Any type of updates. So if there's an update to the

software, that would also be the point in time in which the client application would be informed of

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that.
Q. I was actually just going to get to that.
How did the kazaaserver handle auto-updates?
A. There's a configuration file that's in the same directory or file folder as the kazaaserver, and that configuration file basically has a version number that's inside of it, and that information is transmitted to the client, the client compares that version number to the version number that it is, and if the version number that it gets from the kazaaserver, if it's greater, then it will inform them with a message that there's a new version available.
Q. Other than these things you just testified to are there any other functions the kazaaserver handled?
A. None that we were aware of, lacking documentation.
Q. Did the kazaaserver make a record of log-ins, including the last-used IP address for a particular user?
A. Yes, it did.
Q. Did it create any other records or logs?
A. Separate from its main database, no, it

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did not.
Q. And the "main database" being the

database of user names?
A. Yes.
Q. Okay. The kazaaserver is not the same as the client application; is that correct?
A. No, it is not.
Q. Okay. Regular users or clients don't get the kazaaserver software?
A. That is correct. Yeah, that's -- exactly.
Q. The kazaaserver is software that was run on MusicCity servers, and it's run by licensees or network operators?
A. That is correct.
Q. It's not a distributed function, it's a function that's handled at a centralized server owned by MusicCity?
A. Correct, as far as the kazaaserver, yes.
Q. All right. In this document, Exhibit 151, KaZaA proposes that it would "post and maintain the kazaaserver for MusicCity as a service."
Do you see that?
A. Yes.
Q. Did that end up happening that way?

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A. No, it did not. In the beginning that was the direction, but ultimately that's not what happened.
Q. In fact, in the end, MusicCity wanted to host the kazaaserver themselves; is that correct?
A. Yes.
Q. Why did you want to host it yourself?
A. Because we had a feeling that they weren't telling us something, and by us having that

server in our possession, even though it was a mystery black box and we didn't know what was inside of it, it gave us a little bit closer hand on what's going on as opposed to being completely 100 percent in the dark.

Q. It gave you a little more control over the network as opposed to ceding that control to KaZaA?

A. It didn't give us control over the network. We felt it gave us better control in dealing with KaZaA.

Q. In the third or fourth paragraph down Mr. Friis writes: "You will get web-based interfaces where you can," and he goes on to describe some things. One of the things he describes is under No. 3, it says, quote: Manage user account, F.I.,

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disabling, paren, banning, close paren, and enabling accounts.

Do you see that?

A. Yes, I do.

Q. What does that refer to?

A. That's referring to a -- if -- based upon the context of this, it's referring to a group of features that was in the software that we never got documentation on how to use.

Q. Okay. What is -- what was your understanding of the feature -- by the way, "F.I.," you understood to mean for instance --

A. Yes.

Q. -- in this context? Okay.

What was your understanding of the feature "disabling," or "banning"?

A. My understanding was it was some form of a web-based or an Internet or basically browser-based interface into the KaZaA software that would allow you to potentially ban someone that's causing problems to the network.

For example, one of the things that they told us that they had issues with was denial-of-service attacks. So if someone was known to be causing denial-of-service attacks there was

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supposedly a way that you could possibly do something about that through that interface.

Q. And this was -- this web interface was under the assumption that the kazaaserver would be hosted by KaZaA itself and not MusicCity, correct?

A. That's correct.

Q. Once the kazaaserver was being hosted by MusicCity you wouldn't need a web-based interface for these features?

A. Once it's hosted by us as opposed to them, then that means that some of the functions that they had the ability to control on the network were no longer possible due to the fact that they would have had to have given that information to us for us to be able to do the same thing.

Q. But those features that would give you control over the network, as you put it, are features that they could have told you about?

A. That is correct.

Q. And then you would have been able to implement them?

A. Correct.

Q. The feature described as 'enabling

accounts,' what does that refer to?
A. That, I am not sure of.

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Q. Did MusicCity ever use the disabling or banning feature that's described here?
A. We were never aware of that feature at the time as far as how we would have access to it because access to that feature was due to -- was through a mechanism that they had on their side, if they were controlling and hosting, and so on and so forth, with the kazaaserver and other applications they had.
Q. But as it turned out you were in fact hosting the kazaaserver?
A. Kazaaserver, but not all of the applications for maintaining the network.
Q. What other applications for maintaining the network did KaZaA have?
A. They had monitoring tools that -- they would just call it by that; they didn't give it a specific product name because it was in-house tools that basically allowed them to monitor bandwidth, monitor where supernodes were located, and activities of that nature.
Q. Well, can you tell me all of them that you can recall?
A. Let's see. Monitoring bandwidth; monitoring supernodes; sending information to the

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supernodes. And those are the only functions that I recall.

Q. What did you mean by "sending information to the supernodes"?
A. There were commands that they could send to the supernodes to either turn them on as in taking a node that's not a supernode and making it a supernode or turning off the supernode or adjusting the network parameters to make the performance of the supernode function better.
Q. So KaZaA had the ability remotely to designate any user node as a supernode or to tell any user that was functioning as a supernode essentially to demote that user to a node?
A. As far as specific users I do not know. As far as the network in general, as far as groups of users, yes.
Q. What do you mean by "groups of users"?
A. Meaning that if the network was going through a problem where the bandwidth was causing problems with ISPs, they had the ability to tell the network as a whole to start in essence growing more supernodes to alleviate the bandwidth on the supernodes that were causing too much bandwidth through our ISPs.

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Q. So they could decide in a particular region of a country that more supernodes were needed --
A. Not by region, just by the network as a whole because the workload was distributed among the whole network.
Q. Do you know how KaZaA did that?
A. No, I did not. We requested that information and they did not give that to us.

Q. Did KaZaA ever give you information about their monitoring tools?
A. They basically told us that they had the monitoring tools, but they did not give us information on how exactly those monitoring tools worked.
Q. Did they ever give you information that was a result of their having used the monitoring tools?
A. Yes, they did.
Q. What information did they give you?
A. That some supernodes were consuming more bandwidth than they really wanted. If I recall the conversation properly, some supernodes were consuming about a half a megabit of bandwidths which, if that's in a user's home, is not good.

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Q. Anything else?
A. And that's all that I remember.
Q. Did KaZaA -- strike that.
You said that some of the applications KaZaA had could monitor where supernodes were located; is that correct?
A. Yes.
Q. Was it your understanding that KaZaA had the ability to identify a list of FastTrack super-nodes at any time it wanted to?
A. That is correct.
Q. It would be able to know their IP addresses?
A. That is correct.
Q. Let's turn to Exhibit 152 which you described as a continuation of Exhibit 151.

A. Yes.
Q. The attachment is titled "Project Plan StreamCast Launch."
A. Okay.
Q. Let me go back. I'm told that -- you testified KaZaA had an application that allowed it to monitor where supernodes were located.
A. Yes.
Q. Did KaZaA have the ability to identify

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all of the supernodes that were operating on the FastTrack network?
A. That is correct.
Q. Okay. Let's move back to 152.
On the first page of the attachment titled "Project Plan StreamCast Launch," under "Client" a few bullets down, or a few lines down, there's a statement, "SC will distribute the client, including auto-updates by their own."
SC refers to MusicCity?
A. Yes.
Q. Was that in fact true?
A. Partially.
Q. How is it true?
A. It was true as in the update would have to reside on our server, but the creation of the update file would have to come from KaZaA.
Q. What about the portion where it says, "MusicCity will distribute the client"?
A. Yes, that's true.
Q. The next line down says, quote: The SC client will point to their own website, close quote.
What does that mean?

A. That means that the Microsoft Internet Explorer browser that was built into the application,

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the home page of the website that it goes to would be MusicCity instead of KaZaA.
Q. Okay. So whenever the Morpheus/FastTrack client application was launched, content from the MusicCity.com website was displayed to the user within the client application?
A. Inside of Internet Explorer; that is correct.
Q. And that is within the client application?
A. Yes.
Q. Every time a user had launched the Morpheus/FastTrack client application, through that portion that was a web browser they were connected to a MusicCity website just as if they had independently launched Internet Explorer and typed in --
A. Typed the URL.
Q. Typed in the URL, www.MusicCity.com?
A. That's correct.
Q. MusicCity had the ability to control whatever information was displayed to those users upon launching the client application?
A. That's correct.
Q. You could change the information if and as you saw fit?

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A. That's correct.
Q. And the physical servers that users

connected to from within the application, were those distributed servers or centralized servers?
A. Standard centralized web servers.
Q. So in that regard it was a standard server/client relationship?
A. That's correct.
Q. And the servers that a user who was using the client application connected to, where were they physically housed?
A. The servers for the web portion of the application were -- they were -- it was housed in the data center in Sherman Oaks in California.
Q. Is this a third-party data center?
A. Yes, it is.
Q. Did MusicCity have a contract with this data center?
A. Yes, they did.
Q. Were there servers that were dedicated for MusicCity functions?
A. Yes, they were.
Q. And MusicCity paid for the use of those servers?
A. They owned the servers.

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Q. MusicCity owned those servers?
A. Yes.
Q. So MusicCity had complete control over those servers?
A. Yes.
Q. Under the Network Changes there's a heading that says "KaZaA Server," and it says, "MusicCity will run their own dedicated kazaaserver with software provided by FastTrack."

Do you see that?
A. Yes, I do.
Q. And that in fact ended up being how your relationship with KaZaA worked?
A. Restate that question.
Q. I think that's a good idea.
That is in fact a true statement, that MusicCity ran their own dedicated kazaaserver with software provided by FastTrack?
A. That's correct.
Q. And each time the user launched the client up that user was connected to the MusicCity kazaaserver for registration?
A. A brief moment in time, correct.
Q. For registration and log-in.
A. That's correct.

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Q. And this process where every time a user launched the Morpheus/FastTrack client application they would connect to the MusicCity kazaaserver, that process continued for the entire period that MusicCity operated on the FastTrack network, correct?
A. Somewhat, not completely.
Q. How is it not completely correct?
A. There were times when we had physical failures in the data center, and there were numerous times where the server would not function for days.
Q. That's a good clarification.
Other than equipment failures, every user that launched the Morpheus/FastTrack client application would connect to the MusicCity kazaaserver for a registration and log-on process?
A. That's correct.

Q. And that was the process for the entire time that MusicCity was operating on the FastTrack network?
A. Yes.
Q. Did MusicCity have redundant kazaaservers?
A. No, it did not.
Q. At no point during its operation of the FastTrack network it did not have redundant

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kazaaservers?
A. No. It was requested, but it was not done.
Q. You made the request for redundant kazaaservers?
A. Yes.
Q. To whom did you make the request?
A. To both Janus and Niklas at FastTrack.
Q. And they never did it?
A. No.
Q. If the kazaaserver is hosted by MusicCity what exactly did KaZaA have to do in order to make that happen?
A. They would basically have to send us a new version of the software that basically allowed for multi-server use which they had written.
Q. Okay. Was it your understanding that KaZaA itself had redundant kazaaservers?
A. Yes, they did.
Q. So that software that you spoke about actually existed?
A. Yes, it did.
Q. It was just a matter of them sending it

to you?
A. That's correct.

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Q. But they didn't?
A. That's correct.
Q. If you go down to the bottom portion of the page under heading, Supernodes.
A. I see it.
Q. Okay. There is a statement that "SC or MusicCity will deploy their own root supernode, paren, same as supernode.KaZaA.com, close paren. They will want to use 10 different servers for this with some kind of random load balancing. The servers will be hosted in the same data center in the United States."
You see that?
A. Yes, I do.
Q. Good. What is a root supernode?
A. A root supernode is a server that basically allows Morpheus clients to connect into to ask the presence of other supernodes.
Terri, can I get you to read that back?
(The requested testimony was read by the court reporter.)
THE WITNESS: Specifically for the presence.
By Mr. Fabrizio:
Q. What does that mean?

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A. It means that if the Morpheus/KaZaA client on its initial -- on its initial connection

into the network using the supernodes that were provided with the software, if those supernodes were to fail, the client would then go to the root supernode to find additional supernodes. And that occurs only during the initial time that a user uses the application for the very first time after registration.
Q. So it's your testimony that a user launching the Morpheus/FastTrack client application first attempts to contact supernodes that are contained in the client application itself, and only failing connection to one of those supernodes, attempts to connect to the root supernode hosted by MusicCity?
A. That is correct.
Q. And is it your testimony that that process, the sequence of those communications, was the same from the day MusicCity launched on the FastTrack network until the day it stopped operating on the FastTrack network?
A. That is correct as far as the sequence.
Q. There was no point in time, to your memory, where the user would first attempt to

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communicate with the root supernode hosted by MusicCity?
A. None that I know of, just because we -- for the -- for the duration of the time through the end, we weren't running one so we went on the assumption that that was not the sequence, since everything worked fine.
Q. What you mean by that is at some point in time you stopped running a supernode?

A. That is correct.
Q. At the beginning you were running a supernode --
A. That is correct.
Q. -- for some period of time?
A. (Nods head up and down)
Q. And then you stopped using it?
A. Yes.
Q. And from your observations after you stopped using a root supernode you arrived at the assumption that the sequencing is as you've testified?
A. Yes, because we saw that it appeared that the supernode that we were running was not being used whatsoever so there was no reason to maintain that supernode.

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Q. During the period of time MusicCity was operating a root supernode was it just MusicCity users who would connect to that supernode or could any users of the network, the FastTrack network, connect to that supernode?
A. I do not have technical details on if this is verifiable, but from what I was told from FastTrack, that the client application, both the KaZaA application under the name KaZaA and the application from KaZaA under the name Morpheus, connected to -- as backups to both KaZaA and MusicCity supernodes.
Q. So it's your understanding that KaZaA was running a similar root supernode?
A. Yes. One way of thinking of it, they were running the root of all of the supernodes, the

main one for the entire network.
Q. And MusicCity clients might end up connecting to the KaZaA root supernode in order to find a listing of other supernodes?
A. If ours failed, yes.
Q. I'm sorry. You can continue.
A. Yes, if ours failed. If ours did not exist, theirs would basically be the next in line.
Q. And vice versa for KaZaA users: They

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might connect to the root supernode operated by MusicCity?
A. No.
Q. It was not a two-way street?
A. No.
Q. Okay. How many root supernodes did MusicCity operate?
A. One. The request was for five, and we operated one.
Q. The root supernode operated by MusicCity, did it function as a regular supernode similar to a user supernode?
A. No, it did not.
Q. In what ways was it different?
A. A regular supernode keeps an index of files -- file names that are being shared by individuals that are connected into that supernode.
Q. And the MusicCity root supernode did not?
A. No, it did not.
Q. Was that the case for the entire period of time that MusicCity operated root supernodes?
A. That is correct.
Q. Even from the very beginning?

A. Yes. Because the supernode that we were running was specifically designed for only one

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purpose. It wasn't multi--- it didn't have multiple functions like the client.
Q. So your testimony is that the MusicCity root supernode did not process search requests by the users connected to it?
A. That is correct. It did not process any form of search requests whatsoever.
Q. Did MusicCity always operate only one root supernode?
A. That is correct.
Q. Never operated more than one root supernode?
A. No. MusicCity had registered five names for supernodes with only one of those names actually being physically used.
If I can clarify that. That basically means that an individual could basically go onto the web and go to our DNS server, which is our name server, and it would see a list of supernodes that would say Supernode 1, Supernode 2, Supernode 3 through 5. If they then tried to connect to those URLs they would only get a connection from one of them.
Q. Understood. Now, these root supernodes that MusicCity operated, it's not the same as the

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standard client application?
MR. BAKER: I object to that. I think

there's only one supernode.
MR. FABRIZIO: I didn't mean to do that. I'm sorry.
MR. BAKER: I know.
By Mr. Fabrizio:
Q. The root supernode that MusicCity operated was not the same as the standard Morpheus/FastTrack client application; is that correct?
A. That is correct.
Q. It was server site software that MusicCity ran on its own servers?
A. That's correct.
Q. And MusicCity owned and controlled the server on which the root supernode operated?
A. That is correct.
Q. The sentence I referred to before talks about some kind of random load balancing.
What is the purpose of load balancing?
A. The purpose of load balancing is keeping too many users connecting to a single machine, and basically the goal is to balance it among multiple machines to keep the machine from failing.

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Q. Did MusicCity use some sort of load balancing in connection with its root supernode?
A. No, we did not.
Q. Because you only had one root supernode?
A. That's correct.
Q. I'm catching on.
MR. FABRIZIO: Do I have two more minutes to finish this document?
THE REPORTER: Uh-huh.

By Mr. Fabrizio:
Q. On the next page of the attachment, about halfway down the page under Implementation, it says: "MusicCity will migrate users to the KaZaA -- based network in a controlled manner where they are able to throttle the amount of new users coming on the network."
Do you see that?
A. Yes, I do.
Q. Then it says -- let me just ask that. Did that in fact happen?
A. No, it did not.
Q. Why didn't it happen?
A. Because we had no form of actually controlling the exposure of the software to users.
Q. What does that mean?

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A. Meaning that the software was available for download on Downloads.com, and there was no mechanism for us to tell Downloads.com if 50,000 people wanted the software, only allow 10,000.
Q. That is an ability you would have had if you had offered their software for download from your own servers?
A. That would be still not possible because we didn't have the bandwidth for housing such a file.
Q. I understand.
The next -- it goes on to say, "The network code will need to be adjusted as the number of users grows."
Do you see that?
A. Yes.
Q. What does that mean?

A. That basically meant that the software was not ready for prime time. It was not completely scalable and they were going to monitor the network as the network grew and make modifications to the software based upon their observations at FastTrack.
Q. So without further modifications to the software, and upgrades by KaZaA --
A. Yes.
Q. -- MusicCity and the other licensees the

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network would hit a ceiling for scalability?
A. That is correct.
Q. Above that, under 'Blocking of Network', it says, quote: Both parties should be able to block all users from the other network and vice versa, end quote.
Do you see that?
A. Yes, I do.
Q. What does that refer to?
A. That refers to Morpheus users not being able to see KaZaA users and KaZaA users not being able to see Morpheus users if the two companies had issues with each other in the future.
Q. And ultimately is that a feature that was implemented?
A. It was a feature that KaZaA implemented on their side, but we never received it.
MR. FABRIZIO: All right. Why don't we take a break. It's 1:20. Is this people's lunchtime?
THE VIDEOGRAPHER: We're going off the record. The time is 1:22 p.m.
(Recess, 1:22 p.m. to 2:35 p.m.)

THE VIDEOGRAPHER: The time is 2:35 p.m. and we are back on the record.

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(Marked Exhibit No. 153)
(Marked Exhibit No. 154)
By Mr. Fabrizio:
Q. Mr. Smith, have you had a chance to read what we've marked as Exhibits 153 and 154?
A. Yes, I have.
Q. Okay. For the record we've marked as 153 the document with Item No. 168140 -- I'm sorry, 168154, and we've marked as Exhibit 154 a document with ID No. 544558.
Looking first to Exhibit 153, Mr. Smith, can you tell us what this document is?
A. It is a document from Niklas Zennstrom to myself, talking about the subject of various types of supernodes.
Q. Okay. What various types of supernodes are referred to?
A. This is -- in particular is talking about the differences between the supernode that we were running and what they call a content distribution supernode.
Q. Okay. The supernode that you were running we've been referring to as the root supernode?
A. Yes.

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Q. Okay. Any other supernodes other than the root supernode and the content distribution

supernode?
A. And also the standard -- no. Yeah, that's it, only those two.
Q. Okay. Can you look at Exhibit 154 and tell us what this document is.
A. Okay. This is a thread of e-mails between myself and Niklas, talking about how to potentially share large amounts of commercial content.
Q. Okay. And with respect to both of these documents, are they documents that you sent and/or received and maintained in the regular course of your business for MusicCity?
A. Yes, they are.
Q. Now, turning to 153 first and starting from the back, I'll take them and go in chronological order. Second page from the back, the one marked 3 of 4. Actually let's just move one page forward.
To put this into context, you had sent an e-mail to Mr. Zennstrom on the subject of MusicCity operating 10 root supernodes; is that correct?
A. That's correct.
Q. And he had checked with someone named

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Ahti Heinla?
A. That's correct.
Q. Who is Mr. Heinla? I assume Mr. Heinla.
A. He's the inventor and the writer of the FastTrack application.
Q. Okay. He's referred to as the network architect in his e-mail. Is that an accurate characterization of who he is?
A. No, that's just a thing that was -- he

was being called by Niklas.
Q. Okay. So he's the inventor of the --
A. He created the FastTrack protocol --
Q. Okay.
A. -- and wrote the software that then became the KaZaA application, as far as the kazaalib application.
Q. Gotcha. To your knowledge he's knowledgeable about the operations of the kazaalib and the KaZaA FastTrack application?
A. Yes, being the inventor, yes.
Q. And Mr. Heinla responded back to you indirectly saying that you didn't need 10 dedicated supernodes unless you wanted to distribute a lot of content in words or substance?
A. That is correct.

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Q. Okay. Then if you look at the top of Page 3 of 4, there is an e-mail from you to Mr. Zennstrom dated March 26, 2001?
A. Yes.
Q. And you respond by saying that "The supernodes at the data center will have lots of content as Ahti inferred. You will have about 500,000 files on the supernode ranging from audio, video, applications and images."
Do you see that?
A. Yes.
Q. Okay. What does that refer to?
A. This referred to -- we had potential customers and clients that wanted content of theirs distributed on the network, and I was researching into what was it going to take in order to distribute

that content. Based upon various companies that MusicCity was speaking with at the time it was estimated that the total number of files would be in the 500,000 range.
Q. Okay. Can you identify any of those customers or clients?
A. I do not remember any of them, but I know that they had been mentioned in some of the documents that were going around at the time.

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Q. Okay. And then you state another reason for wanting to run several root supernodes. You say: "The other reason for having a few dedicated supernodes is because over 50 percent of our users are on 56K connections, and during peak hours the users are sharing over 10 million files."
What did you mean by that?
A. The reason for that is when 56K users -- or 56K modem users would basically saturate -- actually, hold on one second. I want to make sure I'm seeing this in context right.
Q. Sure.
A. (The witness reviews the document.)
Actually on that one I do not remember what was the reason because at the moment there should have been no reason for it to have mattered if they were 56K modem users or not.
Q. Let me ask you to turn to the page marked 2 of 4. There's an e-mail message from Mr. Zennstrom up at the top where he purports to be interpreting what your concern was at the time. Let me see if that refreshes your recollection.
Do you see where I'm referring to: "What

they want to achieve is a security against a situation where they initially have users with not

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that much computing power/bandwidth"?
A. Most likely that particular statement is referring to the way the network functioned, you had to have large -- you had to have powerful machines that could function as supernodes for users to connect into. If you had clusterings of users that did not have fast machines, none of them would become supernodes.
Q. And users on a 56K modem would not be considered fast machines?
A. That is correct.
Q. So is it accurate to say one of your concerns is that you might not have enough users or nodes with fast computers to fulfill those supernode needs?
A. The supernode needs of the 500,000 files that we wanted to place onto the network.
Q. And your suggestion to add additional root supernodes was an effort to ease the burden on the network by MusicCity assuming some of that burden with its own root supernodes?
A. That's correct.
Q. On the first page of this e-mail, Page 1 of 4 of Exhibit 153, the first paragraph there, the last line says, "The easiest thing to -- the easiest

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thing" -- strike that -- quote: The easiest thing is to simply remove both limitations, 3,000 and 65,000,

from the UNIX version or increase them a lot, close paren.
What did that refer to?
A. That is coming from -- I'm not sure if -- that's either being -- either that's from Niklas' words or Ahti's words, and that's in regards to the content distribution version of a supernode and also for the standard supernode that was built into a Morpheus client as far as taking the 3,000-file limit off of it.
So if we wanted to use that as a way of distributing content we could just use that instead of them sending us the version that we didn't possess.
Q. Did MusicCity ever make the adjustments that are referred to in that sentence?
A. No.
Q. What was your understanding of a content distribution node?
A. That's a supernode that also can basically share content.
Q. In what way is it different from a regular client application?

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A. It's able to sustain more content than a standard client.
THE REPORTER: Than a "what" client?
THE WITNESS: "Standard" client.
Q. Is it also able to direct itself to be a permanent supernode?
A. It would be a permanent supernode.
Q. Is that another way it would be different from the standard client application?

A. Uh-huh.
Q. Are there any other ways?
A. Yeah, that's it basically, standard super -- able to be a permanent supernode and is able to index a larger amount of files that are placed on that machine.
Q. Did MusicCity ever ask KaZaA to implement content distribution nodes?
A. No. We asked them for -- we wanted to get their content distribution supernode from them because it was software that was already written.
Q. Did you ever get it, in fact?
A. No.
Q. At what point did you ask for it?
A. This was basically pretty much in the beginnings of when we started communicating with

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them, and we were basically getting the network going in the very early stages.
Q. Turning to Exhibit 154?
A. Yes.
Q. The 500,000 files referred to in the first sentence --
A. Okay.
Q. -- all refer to files that would be distributed by potential customers or clients of MusicCity?
A. Yes, it does.
Q. Okay. Did MusicCity ever distribute its own content or any content into the FastTrack network?
A. Directly, no.
Q. What about indirectly?

A. Indirectly we instructed various companies how they could use Morpheus to distribute smaller amounts of content themselves.
Q. Content that was owned by those companies?
A. Yes.
(Marked Exhibit 155)
By Mr. Fabrizio:
Q. I'm marking as Exhibit 155 a document

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that is Item ID544670. It purports to be an e-mail from Darrell Smith to Mr. Zennstrom dated April 9, 2001.
A. (The witness reviews the document.) Okay.
Q. Can you tell us what this document is?
A. It's a document allowing -- it's the document stating what the host names are that they were going to hard-wire into the application, host names for potential servers.
Q. What do you mean "by hard-wire into the application"?
A. Meaning that the application was currently pointing -- the KaZaA application was currently pointing to kazaaservers, so these were basically placeholder names so we could then assign our own servers to these particular names.
Q. And is this a document that you prepared and maintained in the regular course of your business for MusicCity?
A. Yes, it is.
Q. Turn to the attachment, if you will.
A. Yes.

Q. What is the first server identified?
A. That's the kazaaserver.

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Q. All right. Looking at the second category, what are each of those servers identified?
A. Those are names that are basically reserved names for potential supernodes.
Q. Okay. And this refers back to your statement before that you reserved five names for supernodes?
A. Yes.
Q. Okay. Below that there are a series of what look to be URL addresses that all begin -- most of them actually begin with MusicCity dot something.
A. Yes.
Q. Can you walk me through each of these and tell me what they're referring to?
A. Okay. The very first one that says "default page when client starts," that URL is the Morpheus application home page that's displayed inside of Internet Explorer when the program first starts.
Q. Okay. And the application makes a connection to the URL identified to the right?
A. Yes. And that's a web server that would then serve up HTML content.
Q. Okay. Looking down?
A. The very next one is a URL that is

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exactly the same as the first one, but you're able to get to it by clicking on a button in the application

opposed to it automatically happening.
Q. So, for instance, if you were in another place in the application other than the default page and you clicked the home button --
A. Yes.
Q. -- you would be brought back to content that was being served from the MusicCity website server?
A. Yes. This basically would point back to the exact same place as the one prior.
Q. Okay.
A. The very next one, the Action Menu-Home, it's exactly the same. It basically is another interface location in the application that would then point to that very same piece of content as the prior two.
The one that says, "Tools, Tell-a-Friend about KaZaA," that's a URL that basically brings up a web page that is also running off of the MusicCity StreamCast servers.
The one that says: "Contents for Help" or -- yeah, the one that says, "Contents for Help," it did the exact same thing. It's a direct link to a

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specific web page.
The one that says, "Discuss KaZaA," that one is a little different. That's not going to a web page, it's going to an application that was a discussion board server.
Q. A server maintained by MusicCity?
A. Yes.
Q. On a central server that you owned or controlled?

A. That's correct.
The next one, the "Help, dash, contact us," is the same as the others. It's basically another web page and it's a direct link to that web page.
And then the last one, "Legal Terms of Service," is also another direct link to another web page.
Q. Okay. So let me just try and understand this. All of the locations on the left-hand column under "Location in KMD" refer to places within the Morpheus/FastTrack client application where you could be pointed to a MusicCity server?
A. That's correct.
Q. And all of the URLs in the right-hand column under "URL" represent servers owned or

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controlled by MusicCity to which a user -- I'm sorry, strike that.
They represent -- go back.
All of the URLs on the right-hand column under the heading "URL" represent servers owned or controlled by MusicCity to which users using the FastTrack/Morpheus client application could be pointed to within a FastTrack/Morpheus client application?
A. No. The -- everything in the right column represented host names that could be pointed to servers that were either MusicCity servers or servers from other companies. They were basically placeholders for being able to be directed to servers.
Q. I think I understand what you mean.

The URLs on the right would point the user to a MusicCity server which would then redirect that user to an appropriate server containing the appropriate content?
A. Almost. The URLs, or the host names on the right, since the host names couldn't be changed readily in the application and that's something that they only wanted to do once, we had to give them a list of host names that we could then in the future,

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through the DNS of the Internet, point to servers, whether they were servers of ours or servers of third-party companies.
Q. I understand.
The host names under the "URL" in the right-hand column, those all represented locations that MusicCity owned or controlled?
A. Yes. The physical host names themselves were under the StreamCast Networks domain, which was ours.
Q. And the place where those host names pointed to, were those servers that were owned or controlled by MusicCity?
A. On some of these, yes; on others they were never pointed anywhere.
Q. Which ones were never pointed anywhere?
A. The one that's supernode2.streamcastnetworks.com, the one that's supernode3, supernode4, and supernode5.
Q. Okay. I was actually referring to the ones below the "URL."
A. Oh, the ones below the "URL," those were eventually all made live over a one-week period of

time, and we did maintain those.
Q. So they all pointed to servers that

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MusicCity owned and controlled?
A. Yes.
MR. FABRIZIO: I'm going to mark as Exhibit 156 a document bearing ID No. 168207, purporting to be an e-mail from Mr. Zennstrom to Darrell Smith, dated April 19, 2001.
(Marked Exhibit 156)
THE WITNESS: (The witness reviews the document)
Okay.
By Mr. Fabrizio:
Q. Let me first have you identify this document, 156, for the record.
A. It's an e-mail correspondence between myself and Niklas.
Q. Okay. And was this a document that you sent and received and maintained in the regular course of your business for MusicCity?
A. Yes, it is.
Q. Turn to the last page just for a second.
A. The page before the last?
Q. No, actually the very last page.
A. Oh, okay.
Q. I hope yours is the same. Is there a sentence there that --

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A. There are no sentences.
Q. Well, in that case --

MR. BAKER: Yeah, it cuts them off different.
By Mr. Fabrizio:
Q. Well, in that case why don't you turn to the second-to-last page. That's bizarre.
There is a sentence that reads: "There is no such parental control on KMD."
Do you see that? At the very bottom.
A. Yes.
Q. Is that -- that's part of an e-mail from Mr. Zennstrom to you?
A. Yes, it is.
Q. And you understood that at this point in time, April 19, 2001, the FastTrack network did not have a parental control?
A. That's correct.
Q. The KMD referred to there is the KaZaA client application?
A. That's correct.
Q. The same thing as the MusicCity or the Morpheus/FastTrack client application?
A. Yes.
Q. MusicCity in fact requested that KaZaA

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build in a parental control, did they not?
A. Yes.
Q. And KaZaA ultimately added that feature at your request?
A. At our request, no. From pressure that they were getting from the press months later, yes, they did.
Q. They added that feature subsequent to your request?

A. Yes.
Q. Turn to what I think is the first page of this e-mail. Up at the top there is a statement from Mr. Zennstrom to you saying: "We are doing our best to remove the 128 kbps filter for you already now."
Do you see that?
A. Yes, I do.
Q. Did MusicCity request that KaZaA remove the 128 kbps filter?
A. That is correct.
Q. What was the 128 kbps filter?
A. They were not displaying -- in the user interface there was a pulldown menu that showed various bit rates for MP3 files if you were in that particular section of the application. And one of the things that they had in there is the application

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would allow users to share 128 kilobit files, but they did not display in the interface.
Q. 128 kilobit files did not display or files of a higher level than 128 did not display?
A. 128 and higher did not display. They were shared, but they did not display.
Q. Why did MusicCity want that 128 kilobit filter removed?
A. Because it didn't make any sense to have something that was being shared between one user and another, and have it where the user had to type directly what the file name is 100 percent.
Q. So you thought it would improve the user experience to have the 128 kilobit filter removed?
A. Yes, because of the fact there were artists that were speaking with us that did not want

any of their content played below 128.
Q. And that is the reason you requested it to be removed?
A. Yes.
Q. And at your request KaZaA removed that feature?
A. Yes, because the content from the earlier exhibit, 153, was mentioning the fact that we were talking about 500,000 files that we wanted to share

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through our servers, and if those would have been shared with the content supernode with the 128 filter in there, they would not have been visible.
Q. I understand.
By the way, going back to the 500,000 files referred to in Exhibit 153 --
A. Yes.
Q. -- MusicCity never in fact shared that content, did they?
A. No, because we were never given the content supernode.
Q. Okay. Back to Exhibit 156.
A. Okay.
Q. Under the heading "auto-updates" there's a description of how the auto-update process works. Do you see that?
A. Yes.
Q. Is that a true and accurate summary of how the auto-update process works?
MR. BAKER: I object to the question to the extent it calls for speculation.
THE WITNESS: This is partially correct.
By Mr. Fabrizio:

Q. Why don't you walk us through and tell us which parts are correct and which parts are not

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correct.
A. The -- everything that's on here is accurate; it's just not talking about where exactly the information needs to be placed.
Q. So the statement in the paragraph under the heading "auto-updates" is itself a true and correct statement?
A. Yes.
Q. It is just incomplete in that there is additional information that you would need in order to actually implement an auto-update?
A. Yes.
Q. Okay. Look at the next paragraph down under "Kazaaserver bypass." What does that refer to?
A. That refers to the ability of a KaZaA software application user or Morpheus application user, if the kazaaserver is not functioning or does not exist, the user will still be able to log in and connect to the network.
Q. And Mr. Zennstrom explains that because of that feature, quote: Should you choose to shut the service down for any reason you cannot just turn the power switch of the network, you have to block access for all users in the kazaaserver first, close quote.

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Do you see that?
A. Yes.

Q. What does that mean?
A. That means in order to permanently block a user a database server has to be maintained to keep track of that user even if you delete their account.
Q. It refers to shutting the service down, not blocking a user. Then it refers to blocking access for all users in the kazaaserver. See those?
A. Okay. What he's referring to there is you have to -- let's say hypothetically there's 20 million users that are in the database. You have to maintain -- in order to block in the terms that he's using "block," you have to maintain that database of users.
Q. And a database of users like that would be maintained by the kazaaserver --
A. Yes.
Q. -- anyway?
A. Yes.
Q. So what Mr. Zennstrom is saying is that there's an ability to block all users by changing the parameter within the kazaaserver first?
A. That's if the database can handle or can hold the number of users at that time.

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Q. But the answer is if the database is capable of handling the number of users --
A. Then you can.
Q. -- then it would be possible for MusicCity to block all users by making a parameter change within the kazaaserver?
A. That I do not know. With the database application -- not the kazaaserver, but the database that it connected into, yes; through the kazaaserver,

I do not know.
Q. All right. I think I understand, but let me ask it as an open-ended question: If you wanted to go about blocking access for all users how would MusicCity have gone about doing that?
A. By scrambling or changing their password in the database.
Q. And if the database could handle the volume, that was technologically feasible?
A. Yes.
Q. It was a feature that was provided for in the kazaalib?
A. No, in the kazaaserver and how it interacted with the database.
Q. Okay. Thank you.

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A. 170 is an e-mail from Michael Weiss to myself and Steve Griffin, on an application called "Songbird" that he found somewhere on the Internet.
Q. Okay. And is this a document that you received and maintained in the regular course of your business for MusicCity?
A. Yes, it is.
Q. Does looking at the attachment for the Exhibit of 170 refresh your recollection as to who Media Enforcer was?
A. As far as the company, yes.
Q. Let me reask the question: Who was or what is Media Enforcer?
A. The software, I don't remember exactly what it did, but Media Enforcer was a company that basically generated software that allowed people to identify a particular work that might be on any form

of a peer-to-peer network that they supported.
Q. Including the FastTrack peer-to-peer network?
A. I believe so.
Q. Okay. And Exhibit 165 reflects MusicCity's purchase of a copy of Media Enforcer Professional Version 1.0; is that correct?
A. Yes.

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Q. Why did you buy a copy of the software?
A. I don't know because I didn't buy a copy of it.
Q. Do you have any information whatsoever as to why Mr. Griffin purchased a copy of the software?
A. I'm not sure why Steve would have purchased it other than the fact that he probably was instructed by Mike.
Q. Mike?
A. Weiss.
Q. I note that in the middle of the page the e-mail that was given was Darrell@indirect.com. Do you see that on the first page?
A. Yes.
Q. Darrell@indirect.com is an e-mail address for you; is that correct?
A. It used to be.
Q. Was it a personal account?
A. Yeah, before the company went out of business or got shut down, then it became Darrell@StreamCast.
Q. Does seeing that your e-mail address was provided to Media Enforcer refresh your recollection in any way as to any role you may have had in the

purchase of the software?

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A. The only thing that I can see on here is the software was purchased by the company, specifically by Steve, and was then basically sent to me.

Q. Okay. Let me then just move on to Exhibit 166.

You will note the date on Exhibit 165 is June 1st, 2001. Do you see that?

A. Yes.

Q. Okay. Turn to Exhibit 166.

A. Okay.

Q. In Exhibit 166 Mr. Zennstrom on June 28, 2001, tells you that, quote: We are investigating bot and possibilities -- he says "t-r-o," but I believe it's to break into the network, or how we can better defend ourselves from that. It would be helpful if you could give us an as technically precise a description as how Media Enforcer works, paren, or how you think it works, close paren, close quote.

Do you see that?

A. Yes, I do.

Q. Did you have some discussion with Mr. Zennstrom or anyone at KaZaA in the intervening period between June 1st and June 28, 2001 regarding

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Media Enforcer?

A. Yes, I did.

Q. When did you have that discussion and

with whom?

A. I don't remember the specific date, but it was with Niklas at FastTrack.

Q. And what was the substance of your discussion?

A. I don't remember details, but it had to do with the fact that, if I recall, you could actually search for songs or any other form of content on the KaZaA network software, utilizing this application.

Q. And did you ask Mr. Zennstrom to explore how you might stop Media Enforcer from operating on the FastTrack network?

A. I discussed with him on how was that possible that that was able to be done since they indicated to us that the network was encrypted.

Q. Did he ever give you an answer?

A. No, he never gave me an exact answer.

Q. Okay.

A. Other than the fact of the next e-mail that's here.

Q. All right. Well, let's turn to the next

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e-mail, which is Exhibit 168.

A. Okay.

Q. I think we should probably start this one from the back. They go in chronological order.

The last e-mail in line is an e-mail from you, dated June 29, 2001, to Niklas Zennstrom.

Do you see that?

A. Yes, June 29th, yes.

Q. And are you sending Mr. Zennstrom a copy of the Media Enforcer program?

A. I am sending him the copy that I had because I did not need it anymore, and it was basically being sent to him.
Q. And are you also telling Mr. Zennstrom how to install it?
A. (Pause)
Q. There's one sentence that says, "Install ME Pro Setup first, then ME KaZaA Setup."
Do you see that?
A. What page?
Q. It's on the same page. It's listed as Page 3 of 4 on the bottom.
A. Yes, I see it.
Q. So you were giving Mr. Zennstrom the benefit of your instructions on how to install the

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copy of Media Enforcer, correct?
A. Correct.
Q. What is ME KaZaA Setup?
A. I have no idea because it had something to do with Media Enforcer.
Q. Does it reflect that there was a special setup within the Media Enforcer program for the KaZaA network?
A. Yes.
Q. Did you ever install the Media Enforcer program on a MusicCity computer?
A. I don't remember if it was a MusicCity computer or a personal machine.
Q. But you did install the Media Enforcer software on a computer, and operate it?
A. Yes, that's right.
Q. It may have been your personal computer?

A. May have been personal or MusicCity; I don't recall.
Q. Okay. What did you do with the application once you had it up and running?
A. If I recall, I looked at the application for a brief moment to see what the user interface looked like. I then proceeded to uninstall the application, and it was then sent to Niklas.

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Q. Looking at Page 2 of 4 --
A. Okay.
Q. -- of this e-mail, Exhibit 168, there is an e-mail from Mr. Kasesalu to you, dated June 29, 2001, at the top quarter --
A. Yes.
Q. -- where he asks if you have the registration code for Media Enforcer.
Do you see that?
A. Yes.
Q. Did you in fact send Mr. Kasesalu the registration code for Media Enforcer?
A. I believe I did.
Q. In the e-mail that comes immediately after that one, it is an e-mail from Mr. Kasesalu to you, dated June 29, where he tells you that it's too late, he doesn't need the serial number, he's already cracked the program. Do you see that?
A. Which page? Even though I do remember seeing that, yes.
Q. Page 1 of 4.
MR. BAKER: The first page.
THE WITNESS: Yes.
By Mr. Fabrizio:

Q. Then he says, quote: They were using

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KaZaA.com website to do searches and I've blocked it now, close quote.
Do you see that?
A. Yes, I do.
Q. What does that refer to?
A. That refers to the KaZaA website where KaZaA users could search the network -- or actually Internet users in general could search the network on the KaZaA website.
Q. And according to Mr. Kasesalu that is how Media Enforcer was operating searches on the FastTrack network, through the KaZaA website?
A. Yes; that's correct.
Q. And he told you he blocked it, Media Enforcer, so they could no longer conduct searches?
A. Yes, through their website; that's correct.
Q. Did you ever tell anyone at Blue Moon or anyone at KaZaA that they should in fact allow copyright owners to police the network for infringements?
A. No, we had no such conversation.
Q. In fact you told him just about the opposite; you said in the last e-mail to Mr. Kasesalu on June 29, 2001, quote: That's good, no more Media

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Enforcer. And then later on you say, quote: Good job with Media Enforcer.
Do you see that?

MR. BAKER: Objection, argumentative.
Q. Why were you congratulating Mr. Kasesalu for blocking Media Enforcer?
A. Because it was another thing that was off my plate that Mike Weiss would throw out of nowhere and screw up my day, and he kept calling me about Media Enforcer, Media Enforcer, and I didn't want to hear any more about it.
Q. It was starting to get annoying?
A. Yes.
Q. He wanted you personally to block Media Enforcer from the network?
A. That's correct.
Q. And you turned the task over to KaZaA to handle?
A. He wanted me to see what was necessary -- he wanted me to see what was necessary, or to basically find out not what was necessary, but what exactly was allowing Media Enforcer to connect into the KaZaA network. He didn't care about blocking that because it wasn't connected in the MusicCity or MusicCity users, it was strictly KaZaA. But he

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wanted to know how was that possible, since they said the network was encrypted, and that should not be possible.
Q. All right. When you had heard that KaZaA had -- I'm sorry.
When you had heard that Blue Moon had blocked Media Enforcer did you report that to anybody?
A. I reported that back to Mike to let him know that Media Enforcer was not connecting into the

KaZaA network, it was connecting into their website.
Q. Okay. Turn to Exhibit 169, specifically --
A. The one from Michael Weiss?
Q. Yes. You were a copied recipient of this, were you not?
A. Yes.
Q. Okay. And turn to the page that's marked 13603.
A. Is that 136 -- oh, yeah, got it. Okay.
Q. In the third bullet Mr. Weiss reports -- Well, let me first ask you: What is the attachment? Who is it a report to?
A. Can you repeat that about attachment?
Q. Sure. What is the attachment to Exhibit

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169?
A. Oh, okay. It appears to be a group of bullets typed up by Michael Weiss, and trying to do -- in trying to license KaZaA, in essence.
Q. Okay. He appears to be trying to explain to Mr. Kallman why he was no longer pursuing on an immediate basis, obtaining the KaZaA source code; was that correct?
A. That's correct.
Q. And he states: "They," in reference to KaZaA, "have already disabled the ability for third parties such as Media Enforcer, to look into either network." And then further down it says: "It was these areas of concern that mandated we have access to the KaZaA source code on an immediate basis, but that motivation no longer exists."
Do you see that?

A. Yes, I do.
Q. All right. Did that represent the true state of affairs at that point in time?
A. No, it did not.
Q. In what way did it not?
A. Because Media Enforcer was not accessing the network ever, at any point in time.
Q. But is it true that it was the concern

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that third parties such as Media Enforcer might be able to look into one of the networks that was one of the motivating forces in trying to have access to the KaZaA source code?
A. I have no idea because I had never had any conversations with Mike in regards to that. Our conversations were with issues of non-Morpheus or non-KaZaA clients accessing the network without permission or proper licenses.
Q. Did you understand Media Enforcer to be a tool that copyright owners might use to police the network to search for infringements?
A. From the one article, I think it was Songbird, yes.
Q. Yes, you did?
A. Yes.
Q. Okay. And did you ever have any discussions internal at MusicCity as to whether allowing copyright owners to use tools such as Media Enforcer to police the network for infringements was something that you should encourage rather than attempt to hinder?
A. I don't remember any direct conversations, but there were conversations on

assisting individuals using the application itself.

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Q. What does that mean?
A. Meaning that instead of someone using Media Enforcer, just use Morpheus, the client itself and do their own searching for content.
Q. But isn't it true that Media Enforcer, the application allowed for a higher volume of searches and more efficient searching for potentially infringing material?
A. No, it did not.
Q. It was a program that did no more than conduct individual searches as any user could do by going to the website and typing them in by hand?
A. No, it did not have the -- it basically was a very limited application in that functionality.
Q. What is your understanding of how it worked?
A. It connected to the KaZaA website. The KaZaA website then connected to some machine that they had on their side that connected into the network, and it placed limits on what type of search results an individual could get back, including Media Enforcer.
Q. Media Enforcer allowed you to search for more than one potentially infringing work at a time, did it not?

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A. I am not positive, but I think I recall it doing that.
Q. Okay. And the KaZaA -- the client

application for FastTrack, whether it be MusicCity or the KaZaA client application, did not allow that, did it?
A. No, not without running multiple copies.
Q. Okay. So in that sense the Media Enforcer application provided some advantage to copyright owners to streamline the process of searching for potentially infringing works, did it not?
A. I am not positive.
I -- I wouldn't agree with that just because there was a limit on the KaZaA side on their website where they only allowed for a small number of searches to actually come back so it would be rather limiting, and there were also limits on how many searches came from an individual. So Media Enforcer would have issues trying to do lots of searches. It would be inefficient.
Q. But you understood Media Enforcer to be a tool to be used by copyright owners to finding potentially infringing works?
A. Yes.

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Q. And you did not allow it to proceed uninhibited in its function of finding potentially copyrighted infringing works on the Internet; is that correct?
A. No, that's not correct.
Media Enforcer was targeting KaZaA and myself. I was not personally interested in what took place with KaZaA. I was finding out answers for Mike Weiss, and in finding out those answers KaZaA chose to block Media Enforcer from their website.

Q. And your response was "that's good. No more Media Enforcer," true?
A. Yes.

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Let me mark as the next exhibit in line No. 174, a document bearing the ID No. 1725 -- strike that.

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It's a document bearing ID No. 172758.
(Marked Exhibit 174)
By Mr. Fabrizio:
Q. It purports to be an e-mail from Mr. Weiss to Mr. Zennstrom, showing a copy to Mr. Smith and Mr. Griffin, and updated July 10, 2001. And just to help you with your review I'm only planning on asking questions about the first two e-mails starting from the front page.
A. Okay. (Pause)
Okay.
Q. Okay. What is Exhibit 174?
A. An e-mail between Michael Weiss and Niklas at KaZaA.
Q. Okay. And you're shown as a copy recipient, and received this on or about July 10, 2001?
A. That's correct.
Q. Okay. And is this a document that you received and maintained in the regular course of your business for MusicCity?
A. Yes, it is.
Q. All right. Turn to Page 2 of 5. This is

part of an e-mail from Mr. Zennstrom to Mr. Weiss, dated July 10, and it's about the improved Morpheus

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setup; is that correct?
A. You said from --
Q. -- Mr. Zennstrom to Mr. Weiss.
A. Yes, I see it.
Q. Okay. Do you see there is a listing of hours spent on programming, and there's an entry for "Seed Ip numbers of supernodes in installer."
Do you see that?
A. Yes, I do.
Q. Does that refresh your recollection at all as to when the seeding of IP numbers in the supernodes in the installer first began?
A. I am not 100 percent positive due to the fact that there were two instances where the number of supernodes and how the supernodes were in that list and how large that list was being implemented. There were two times that that was -- that something was done to that, and this happens to be one of those times.
Q. Okay. I think there may be still further e-mails coming up, but I want to try and get at that point as much as I can.
On the first page, Document Page 1 of 5, the first e-mail, in the second paragraph about halfway down there's another reference to seeding the

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supernodes. That's a reference to including supernode IP addresses along with the client

application upon install?
A. (The witness reviews the document.)
I think that's correct.
Q. And Mr. Weiss is saying that MusicCity will pay 100 percent of the development, but then they should be the only ones that are allowed to use it; is that correct?
A. That's correct.
Q. So was the -- at least this instance of modifying the software to -- for purposes of seeding the supernode IP address is done at the request of MusicCity?
A. Yes. On this one, yes, that is correct.
Q. And KaZaA made the modifications to the client application based on your request?
A. Yes.

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Why was it important to continually broadcast the auto-update? What effect would that have on supernodes that had not yet upgraded?
A. Because supernodes, the older supernodes were not 100 percent compatible with the newer supernodes, and if the broadcast -- or not the broadcast. The supernodes basically would, I guess you could say, phone home to the kazaaserver every so many hours, and if the kazaaserver doesn't mention or tell the supernode that there's an update, it will keep running; it will not shut down to let newer supernodes start.
Q. So it's in fact the case that user supernodes communicated every several hours with the MusicCity kazaaserver to check for auto-updates and other things?

A. As far as I know, for auto-updates. I

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don't know of any other -- any other updates or things it would check for.
Q. Okay. But at least for auto-updates --
A. Yes. Sorry.
Q. No, that's all right. It's not normal conversation.
At least for auto-updates user supernodes communicated with MusicCity's kazaaserver every several hours in order to determine whether there was an upgrade?
A. That's correct.
Q. And if they received a communication that there was an upgrade from the kazaaserver they would change their behavior?
A. They would stop being supernodes in order to download the new software, and other machines would become supernodes.
Q. And why was it important that supernodes running older versions of the software stopped acting as supernodes?
A. Because if they didn't stop acting as supernodes, they would create their own network separate from the updated software.
Q. So it was very important for the maintenance of the network that MusicCity continue to

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issue the auto-update from its kazaaserver?
A. That was Niklas' assessment, but, really, it didn't matter.

Q. Why didn't it matter?
A. Because users don't know how many networks they're connected into, whether it's one or a thousand.
Q. So it was less important to MusicCity whether in fact -- strike that.
But the fact is, the network, the overall network, would split into different networks --
A. Yes. I'm sorry.
Q. -- if supernodes running the old version did not get a notice from the kazaaserver telling them that they should cease being supernodes?
A. That's correct.

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Q. Okay. Explain what you mean, too many downloads and your servers couldn't handle it.
A. Okay. When the auto-update would occur a user would then download the new version of the software from one of our download servers.
Q. Not from download.com but from a MusicCity download server?
A. That's correct.
Q. Okay. And by keeping the auto-update variable turned on, users were upgrading at too high a rate?
A. That's correct.
Q. And that was creating performance problems for your own servers?
A. That's correct.
Q. And in turn creating performance problems for your users trying to download the upgraded version?
A. That's correct.

Q. So there came a point when you changed the kazaaserver.ini variable to turn off the auto-update feature?
A. Yes, that's correct.

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Q. Okay. At the bottom portion of the Exhibit 176 on Page 1, there's an e-mail from Priit Kasesalu to you, and he says: "Basically nodes connect to kazaaserver once in 12 hours."
Do you see that?
A. Uh-huh.
Q. So it was your understanding that approximately every 12 hours each Morpheus node would communicate with the MusicCity kazaaserver?
A. No. My understanding was the supernodes would connect to the server every 12 hours.
Q. Okay. So this is -- not -- but nodes would not?
A. Regular nodes would not, as far as I know, but the supernodes would.
Q. Okay. So approximately every 12 hours

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each Morpheus supernode would make a communication to MusicCity's kazaaserver to check on auto-updates; is that correct?
A. That's correct.
Q. And did they check on any other variables at that point in time?
A. I'm not aware of any others.
Q. If variables had been changed -- strike that.

Is it fair to say that they checked for all changed variables, and it's just a matter of which variables had been changed at that point?

A. That's possible, but not confirmed.

* * * *

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Darrell Smith
August 28, 2002

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with them other than the discussion where they said they didn't want to talk to you until you paid back royalties?

A. I believe we did.

Q. And were those attempts at discussion rejected?

A. They basically -- they were rejected and there was no conversation. There were really no answers to the communications.

Q. Will you turn to Exhibit 2001? I'm sorry, 201 and actually, you know what?

MR. BAKER: Feels like 2001.

MR. FABRIZIO: Actually we're done. I don't need to refer to that exhibit.

All right. I'm going to mark I believe six documents together.

Again, Mr. Smith, because I believe these all relate to a subject matter where I think it would be useful for you to see the documents in context and not necessarily going to question extensively on each document --

THE WITNESS: Okay.

MR. FABRIZIO: -- I'm marking as Exhibit 202 a document bearing Bates number -- I'm sorry -- a

document bearing ID No. 164071 purporting to be an

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e-mail from Mr. Zennstrom to Mr. Smith dated September 20, 2001.

(Marked Exhibit 202)

MR. FABRIZIO: I'm marking as Exhibit 203 a document bearing ID No. 175627, purporting to be an e-mail from Mr. Anderson to Mr. Smith, dated September 25, 2001.

(Marked Exhibit 203)

MR. FABRIZIO: I'm marking as Exhibit 204 a document bearing ID No. 175677, purporting to be an e-mail from Mr. Kasesalu to Mr. Smith, dated September 28, 2001.

(Marked Exhibit 204)

MR. FABRIZIO: I'm marking as Exhibit 205 a document bearing ID No. 436159 which purports to be an e-mail from Mr. Smith to Paul, dated October 3, 2001.

(Marked Exhibit 205)

MR. FABRIZIO: I'm marking as Exhibit 206 a document bearing ID No. 175737, purporting to be an e-mail from Mr. Panetti to Mr. Smith, dated October 3, 2001.

(Marked Exhibit 206)

THE WITNESS: Okay.

MR. FABRIZIO: All right. The

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videographer needs to change the tape. Why don't we go off the record for two seconds but not necessarily take a break. It will give me a chance to figure out

a missing exhibit.
THE VIDEOGRAPHER: We're going off the record, the time is 12:08 p.m. This the end of Tape No. 1, Volume 2.)
(Recess, 12:08 p.m. to 12:13 p.m.)
THE VIDEOGRAPHER: This is the beginning of Volume 2, Tape 2. The time is 12:13 p.m., and we are back on the record.
(Marked Exhibit 207)
By Mr. Fabrizio:
Q. Okay. I'm also marking as Exhibit 207 a document bearing ID No. 168241, an e-mail from Mr. Zennstrom to Mr. Smith, dated May 4, 2001. And I had given this to the witness during the break to review.
But I don't know, Mr. Smith, whether you've had a chance to complete your review.
A. Yes, I have.
Q. Okay. Let's go through in order and have you identify these documents for the record.
Can you identify Exhibit 202, please.
A. 202 is an e-mail from Niklas at KaZaA to

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myself; subject matter, Supernode Servers.
Q. Can you identify Exhibit 203, please?
A. 203 is an e-mail from Derrick Anderson at StreamCast to myself. The topic is Supernode Update.
Q. And the supernodes they're referring to are the root supernodes?
A. That's correct.
Q. Can you identify Exhibit 204, please?
A. 204 is an e-mail from Priit at Blue Moon to myself. The topic is the Root Supernodes.

Q. Okay. And can you identify Exhibit 205?
A. 205 is a document from myself to Paul; subject, the Root Supernodes.
Q. Can you identify Exhibit 206, please?
A. 206 is an e-mail from Paul Panetti at StreamCast to myself; the subject, Root Supernodes.
Q. All right. And finally can you identify Exhibit 207?
A. 207 is an e-mail from Niklas at KaZaA to myself. The subject is the KaZaAlib Documentation.
Q. Okay. And with respect to each of these exhibits, Exhibit 202, 203, 204, 205, 206, and 207, are each of these documents you sent, received and maintained in the regular course of your business for MusicCity?

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A. Yes, they are.
Q. Okay. Turn to Exhibit 202, please.
A. Okay.
Q. All right. I also want to refer back to Exhibit 198. If you look on Exhibit 198 at the last paragraph beginning, "Second issue. A lot of users are complaining at MusicCity message board that they can't connect with the network?"
A. Yes.
Q. You see that?
A. Yes, I do.
Q. Then if you look also at Exhibit 202, on Page 2 of 2 at the back of the document, the first e-mail in chronological order, there's an e-mail from Mr. Zennstrom to you where he says in the second paragraph, paragraph, quote: It also seems as if Morpheus users have problems connecting, close quote.

You see that?
A. Yes.
Q. Was it in fact the case that in the September 19, 2001 time frame Morpheus users were having problems connecting to the network?
A. Yes, they were.
Q. What was the cause of those problems?
A. The kazaaserver was not handling the

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number of users connecting to it all simultaneously.
Q. Just too high a volume for the kazaaserver --
A. That's correct.
Q. -- capability?
A. (Nods head up and down)
Q. Both Mr. Kasesalu and Mr. Zennstrom, in their e-mails to you, reflected on Exhibit 198 and 202, suggest that the reason for the connection problems is that none of MusicCity's root supernodes are running. Do you see that?
A. Yes, I do.
Q. Okay. Was that also part of the problem?
A. Potentially, but we did not verify that.
Q. Looking at Exhibit 202 --
A. Yes.
Q. -- in response to Mr. Zennstrom's suggesting that the problem was MusicCity's root supernodes, what did you reply?
A. That we had not been running -- basically we had not been running the supernodes recently. None of our supernodes were running.
Q. And you basically replied you hadn't run the root supernodes since the time KaZaA had told you

that a list of the user supernodes had been included

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in the installer for the client application; is that correct?
A. That's correct.
Q. Okay. What was Mr. Zennstrom's response to hearing that?
A. These basically indicate -- hold on. That it potentially is not optimal for the clients to do that.
Q. And why was -- why is it not optimum for the clients to do that?
A. I am only going to speculate it would possibly hinder their connection speed.
Q. Well, let me put it this way: Mr. Zennstrom describes a sequencing of communications between the client application and various servers in the second paragraph of his e-mail to you, dated September 20, 2001, does he not?
A. Yes, he does.
Q. He says that sequence is that the a use upon launching application first attempts to contact each of the MusicCity root supernodes, and that upon trying each of those root supernodes it will try them for a period of time until it times out and then it will try the next root supernode. And only upon having attempted all of the MusicCity root supernodes

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will the user fall back on the list of IP addresses that was installed with the client application; is that correct?

A. That's what he states, but I'm not positive if that was the actual sequence.
Q. Do you have reason to believe that Mr. Zennstrom was wrong?
A. It's possible.
Q. Mr. Zennstrom is knowledgeable about the workings of KaZaAlib and the system, is he not?
A. Not necessarily to that extent.
Q. Who would be more knowledgeable than him?
A. Any of the individuals from Blue Moon.
Q. Would Mr. Zennstrom be more knowledgeable than you on those issues?
A. Not necessarily.
Q. You might have had as much or greater knowledge than Mr. Zennstrom as to the workings of KaZaAlib and the network?
A. As far as the network, no. As far as possibly KaZaAlib, yes.
Q. Look at the bottom portion of the paragraph I referred to. Mr. Zennstrom also says that: "Remember, the design criteria for this was to be able to sustain a situation where your servers

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will shut down for four weeks, not as a permanent solution."
Do you see that?
A. You're on Exhibit 202?
Q. I am.
A. Oh, I see it, yes.
Q. Okay. The reason I marked Exhibit 207 -- and maybe you could turn to that -- is hopefully to refresh your recollection as to the sequence of events regarding the supernode IP addresses being

installed with the client application.
On Page 2 of 2 of Exhibit 207 -- well, actually, let me back up and put this into context.
207, the e-mail from Mr. Zennstrom to you, dated May 2, 2001, is Mr. Zennstrom's response to an e-mail that you had sent to him; is that correct?
A. I believe so.
Q. And the portions of the e-mail marked with the greater than symbols or caret symbols represent the portions of your e-mail to which Mr. Zennstrom is responding?
A. Yes.
Q. Okay. On Page 2 of 2 of Exhibit 207, the paragraph headed "Survivability," you wrote to

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Mr. Zennstrom, quote: We want to make sure that the network can survive if both supernode and kazaaservers are down for three to four weeks. This should also hold for new users. Can we therefore include a list of a hundred or so known supernode IP numbers that will be used if no supernode dot domain is available, end quote.
Do you see that?
A. Yes, I do.
Q. Did you make that request of Mr. Zennstrom?
A. Yes.
Q. And his response was, quote: Yes, we can include that. Three to four weeks should be perfectly doable without any major changes. I believe the best way to do it is to have the KMD installation program to put this IP list in the

registry. Close quote.
You see that?
A. Yes.
Q. Okay, and that was in fact his response to you?
A. Yes.
Q. Does this refresh your recollection that the first time the supernode IP addresses were

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included in the client application upon install was sometime after the date of this e-mail in response to the inquiry that you made to Mr. Zennstrom?
A. Yes, it would have been sometime in May.
Q. Okay.
So prior to May of 2001 no supernode IP addresses were included in the client application upon install?
A. Yes. Based on all of these; that is correct.
Q. Okay. And the -- in May of 2001 MusicCity was operating Version 1.2 of the client application; is that correct?
A. That's correct.
Q. Okay. The next upgrade that MusicCity did was to Version 1.3 of the client application; is that correct?
A. That's correct.
Q. So the first time the list of user supernode addresses would have been included with the client application upon install would have been with the upgrade to Version 1.3; is that correct?
A. That's incorrect.
Q. Okay. Please explain how that's

incorrect.

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A. Because the list of supernodes in the install had absolutely nothing to do with the application version.
Q. Okay. You remember yesterday we looked at a document where Mr. Weiss was being invoiced for programming work to add the supernode IP addresses upon install.
A. (Nods head up and down)
Q. And that was with regard to Version 1.3. Do you recall that?
A. Yes, I do.
Q. Okay. Based on that, is it the case that the first time the supernode IP addresses were included in the client application upon install was in fact with Version 1.3?
A. I'm not positive, but I do not believe so. If I remember correctly, sometime in May, the installer -- there was an installer with 1.2 that changed -- that basically had the IP addresses that were included in the registry separate from the specific version of the application.
Q. So without changing the version number, the version that began downloading to the users silently included the IP addresses for supernodes with the install?

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A. Yes. There were times when -- I don't remember all of the times or the specific instances, but there were times when the updates that users were

downloading were completely separate from what the versions were reflecting where -- like you said, it was a silent change to the download servers and a user wouldn't notice any form of a difference.

Q. And is it your testimony that that is what happened with respect to the supernode IP addresses being included with the client application upon install?

A. I believe that to be correct, that happened on numerous times.

Q. Okay.

Can you tell us us approximately when that happened?

A. I think one of the times it happened was sometime in May. Another time that it happened was sometime in the October, September --

Q. I'm sorry. My question wasn't clear.

Can you tell us when the client application Version 1.2 began to download with a list of supernode IP addresses included?

A. I think was sometime -- sometime between May and possibly -- somewhere between, like, May 15

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to June 15 possibly.

Q. Why, then, was MusicCity being invoiced for coding work with respect to Version 1.3 related to the install of supernode IP addresses in the client application?

A. As far as any invoicing I wouldn't have any answers on that because all of my communications with Niklas did not include discussing their invoicing to any great degree. It was primarily Michael Weiss.

Q. Sure. I'm referring to that e-mail that was sent to Mr. Weiss which ultimately you were copied on that showed that MusicCity was being billed for 20 hours of coding to arrange for the supernode IP addresses to be installed in the client application upon install.

MR. VON LOHMANN: Steve, can you tell us what exhibit that was?

MR. FABRIZIO: Not without some great effort.

By Mr. Fabrizio:

Q. But you recall the exhibit I'm talking about, don't you, Mr. Smith?

A. Yes, I do.

Q. All right. Why was MusicCity being

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billed for that coding work with respect to Version 1.3 if that had already been done without a coding change with respect to Version 1.2?

A. That, I wouldn't be sure.

Q. So your best recollection and testimony today is that sometime in the May 15 to June 15, 2001, time period is the first time that user supernode IP addresses were included in the client application upon download; is that correct?

A. Repeat the first date again.

MR. FABRIZIO: Read the question.

(The requested testimony was read by the court reporter.)

THE WITNESS: I'm not positive, but I believe that to be so based upon a server failure that we had 30 days in to the launch of Morpheus.

By Mr. Fabrizio:

Q. How does the server failure relate to the inclusion of supernode IP addresses in a client application?
A. Because the server that failed was the supernode -- root supernode server, and if I read the documents correctly, I would assume that if the root supernode server is not functioning and the IPs are not physically in the install, then users would not

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have been able to connect properly, and I don't recall there being a problem with users connecting.
Q. So once you had the server failure with your root supernode you didn't operate a root supernode again, at least for several months?
A. That's correct. Once the server went down we didn't fix the server and it basically stayed in a state of disrepair.
Q. Wasn't it also the case, though, that in addition to having the address for the MusicCity root supernode hard-coded into the -- hard-wired into the client application, that the client application also had hard-wired into it the KaZaA root supernode address?
A. That's what KaZaA told us at the time.
Q. Okay. And you have no reason to doubt them on that?
A. The only reason I'm doubting them on that is the current documents that you've shown me from Niklas is stating a sequence that's different from the sequence that he stated in the very beginning. So I'm not sure myself which sequence to go by, the original sequence or the new one that he's now stating in the September time range.

Q. Okay. If the user -- if the -- strike

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that.
If MusicCity users, upon failing to connect to the MusicCity root supernode, would be automatically routed to the KaZaA root supernode, it's not necessarily the case that they would have needed to fall back on the -- fall back on any IP addresses included in the client application upon install?
A. That is correct.
Q. Okay. And the reason I'm asking that question --
A. Yes.
Q. -- is because it seems that your memory as to when the supernode IP addresses began to be included in the client application is tied to the failure of the MusicCity root supernode. Is that correct?
A. No. The super-- the URLs, or the host names from yesterday, remember Supernode1.MusicCity.com all the way through 5, that was included in the client application from Day One.
Q. As was the address for the KaZaA root supernode?
A. No. Anything else outside of the IP addresses that -- not IP addresses, but everything

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outside of the host names that were ours, anything that would have been KaZaA-specific would have been placed there by KaZaA and we wouldn't have seen that.

They needed a list from us just because those host names were controlled by us. Any host names controlled by them we wouldn't have given them that list; they would have done that on their own.

Q. But KaZaA did in fact tell you that they included their root supernode in that address so that more root supernode users could connect to either the MusicCity root supernode or the KaZaA supernode?

A. Yes, they did tell us that.

Q. So given that, can you state with any certainty that you -- strike that.

Given that, can you state with any certainty that the supernode IP addresses were included in the client application upon install as early as the May 15 to June 15 time frame?

A. Yes. It's possible that the IP addresses could have been included in the install in that time frame, but not before.

Q. But not before. Is it possible that it could have been included for the first time only after that time frame?

A. Possible but unlikely.

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Q. Why do you say it's unlikely?

A. Actually, hold on. Actually that is -- that's possible because of the -- we weren't seeing clients fail so if we weren't seeing clients fail and our servers were down, then that means that the KaZaA -- there's a high probability that the KaZaA root supernode or -- yeah, root server or supernode server most likely was functioning, and then if that was the case, then if the IP addresses were not in the install, then it would have still connected.

Q. That was the point I was trying to get at. Thank you.

So as you sit here today can you say when the first time the supernode IP addresses were included in the client application upon install?

A. It would have either been between the May to June time frame or it could have been released when we did that 1.3. I think it was 1.3.

Q. Version 1.3?

A. (Nods head up and down)

Q. So it didn't happen before May 15, 2001?

A. That's correct.

Q. It may have happened between May 15 and June 15, 2001, but you're not sure?

A. That's correct.

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Q. The logical time it would have happened is when MusicCity did the upgrade to Version 1.3?

A. Yes.

Q. And that's because there are documents surrounding that version --

A. Exactly.

Q. -- release that indicate that that work to include the supernode IP addresses was being done in connection with that Version 1.3?

A. That's correct.

Q. Okay. Are there documents that could further refresh your recollection on that?

A. Possibly any additional communications that might have been in e-mails with Niklas or Janus, yeah, or Edwin possibly.

Q. But you are clear in your mind on the fact that sometime in the May 15 to June 15, 2001,

time frame MusicCity ceased running its root supernode for some period of time?
A. Yes, sometime in that time frame the supernode -- our main supernode server crashed and we did not restart it. And actually we didn't even know that all of the machines had crashed and were completely gone until we checked the IP addresses and also subsequent e-mails later on that year from

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Niklas saying that there was absolutely nothing running.
Q. How many root supernodes were you operating up to that point when your server crashed?
A. As far as -- we had two physical machines that was configured with the root supernode software, one machine actually was functioning, and we know for a fact that that machine actually was working.
The second machine we later found out was not configured properly but everything still worked fine because the second machine was never -- it was a failover so if the first machine wasn't functioning the second machine would take its place. But we later found out that the second machine's software had never been installed on the machine correctly so it did not work.
As far as Supernode 3, 4, and 5, we had host names for those, but we never attached any actual live software onto those host names.
Q. Okay. So Supernode 3, 4, and 5 were never operational?
A. They were never operational, and Supernode 2 never functioned correctly because the software was not installed correctly.

Q. You attempted to set up Root Supernode 2,

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but your attempt failed?
A. That's correct.
Q. You did set up Root Supernode 1, and that attempt was successful until the server crashed sometime in the May 15 to June 15, 2001, time frame?
A. That is correct.
Q. Okay.
All right. Let's turn back to Exhibits 202 and 20 -- I'm sorry, 203 and 204.
A. Okay.
Q. Do these exhibits reflect that MusicCity in the September 25 time frame began running two root supernodes once again?
A. (The witness reviews the document.)
Can you repeat that last question?
Q. I'll just restate it: In or about the September 25, 2001, time frame, did MusicCity begin running root supernodes once again?
A. That's unclear to us. We attempted to. We attempted to, but I do not believe that they were functioning. And the reason -- I'm looking on this one, 204 -- the reason we believed that it was not functioning is the statement from me to Priit is indicating that the connection time is still taking a long time.

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Q. Okay. There is a document I will get to --
A. Okay.

Q. -- that I think will help your recollection in that regard.
Will you turn to Exhibit 205, please. There's an e-mail, the first e-mail is from you to Paul Panetti, dated October 3, 2001, correct?
A. That's correct.
Q. And it has an attachment, KaZaA.dat?
A. Yes.
Q. And then there's an e-mail from Mr. Kasesalu to you, dated October 3, 2001, correct?
A. Yes, it is.
Q. And he states: "Here's the updated supernode with changes you requested with command line option supernode full so no clients are accepted, only list of supernodes is sent to them so there will be no user file lists in your servers."
Do you see that?
A. Yes, I do.
Q. Okay. What does that refer to?
A. It's referring to a parameter that he added to this particular version of this software that keeps any type of -- it keeps the supernode from

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having any form of file index of any form on it.
Q. Okay. And it also keeps the supernode from accepting clients?
A. Yes; that is correct.
Q. And what you meant before was it prevents the supernode from creating an index of files, user files, sent by clients? Strike that.
Did this new parameter prevent root supernodes from creating an index of files being offered by the users connected to it?

A. I believe so.
Q. And that was a parameter that was newly added in this root supernode software, correct?
A. In this particular version that's updated to accept, I'm assuming, the new protocols or the new connect protocol, that was listed I forgot how many exhibits ago.
Q. Okay.
A. Exhibit 199. A few lines from the bottom.
Q. Okay. Will you look at Exhibit 202 again. At the bottom of page marked 1 of 2, in your e-mail to Mr. Zennstrom --
A. Exhibit....
Q. 202.

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MR. BAKER: 202.
THE WITNESS: Okay.
By Mr. Fabrizio:
Q. On Page 1 of 2, again, at the bottom there's an e-mail from you to Mr. Zennstrom, dated September 20, 2001, correct?
A. Yes.
Q. Then in the second paragraph you say to Mr. Zennstrom: "If we need to run supernode servers can the supernode servers be modified not to store user file names"?
Do you see that?
A. Yes.
Q. Okay. If you'll refer back to Exhibit 205.
Do Exhibit 202 and 205 in conjunction refresh your recollection that with the updated root

supernode software reflected on Exhibits 205, that was the first time the root supernodes did not accept a list of user files?

A. That, I'm not 100 percent positive on due to the fact that the supernode code we were originally running did not have the ability of sharing information about content. So that -- go ahead. Sorry.

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Q. Well, the original supernode, root supernode code that was sent to you by KaZaA did not allow the root supernode itself to share content, but sharing the content itself is different from creating a list of filenames, correct?

A. That's correct.

Q. Okay. So does this refresh your recollection that Exhibit 205 reflects the change in the root supernode software that prevented root supernodes from indexing a list of filenames?

A. I believe that to be so.

Q. Okay. Prior to the change reflected in Exhibit 205 root supernodes created a list of filenames based on the users that were connected to it; is that correct?

A. Yeah. Based on the update, from what Blue Moon is saying, I believe that's most likely so.

Q. Okay. All right. Let me -- let me ask you to return to Exhibit 206.

A. Okay. Am I able to add one thing in for clarification?

Q. Of course. I'm sorry.

A. The -- on Exhibit 199 --

Q. 199? Bear with me. Okay.

A. There's a line that says "variable equals

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connect protocol header version"?

Q. Yes.

A. The -- a combination of that one, and also there were some other -- there were some other changes prior that were very similar to this one, including this one, whereas they made modifications to the protocol for the client, the supernode software would have had to have been changed for clients beyond 1.2 to connect into the root supernode because of the changes that they were creating.

The supernode software that was introduced in Exhibit 205 was the first supernode update we had received since the very first supernode started. So after 1.2 was no longer out and everything was 1.3 and higher, the supernodes which were not running, if they had been running, would have not done anything because they would have not been compatible until the introduction of this new supernode software on 10/3/2001. I just wanted to --

Q. I think that does help.

So that confirms your memory that MusicCity did not run a root supernode after sometime during the May 15 to June 15, 2001, time frame?

A. That's correct, because even if we would have, it would have not been compatible with the new

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client -- the new clients, sorry.

Q. KaZaA was running a root supernode during that time frame?

A. Yes, they were.
Q. Okay. And they would have made the changes necessary to their root supernode to accommodate the kazaaserver variable changes that were being made during this time frame?
A. That's correct.
Q. Okay. And that doesn't change your memory that Exhibit 205 reflects the updated root supernode software that first prevented the supernodes from creating a list of user files?
A. That's correct.

* * * *

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* * * *

Q. Did there come a time on or about February 25, 2002, that KaZaA took steps to prevent the users of the Morpheus/FastTrack application from connecting to the FastTrack network?
A. That's correct.
Q. Can you explain what happened?
A. I'll try.
Approximately around the end of February Morpheus users started getting messages on their computer basically saying that they could not connect because they needed -- they were not running the most

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current version of the application. And a few days before that occurred we had a denial-of-service attack on our data center that brought down all of our servers off the Internet for a total of approximately three days.
During that process we had catastrophic hardware failure and actually had to bring in and

replace damaged equipment because of the attack.
After the data center was brought back up we started noticing lots of e-mails coming in, saying that users could not connect into the network. At first we thought it was just some fluke. We hadn't seen that ourselves. But over the hours to follow we started hearing this from around the world. Then we noticed this on our own computers.
At that point we started investigating into what was going on and had come to the conclusion that KaZaA was doing something that was causing Morpheus clients around the world to systematically shut down.
Q. How long a period between the time you first started getting word of problems Morpheus users were having connecting until -- strike that.
Did you believe there was a relationship between the denial-of-service attack you described

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and KaZaA's efforts to prevent the Morpheus/FastTrack users from connecting to the network?
A. We believe that to be true.
Q. Did you conduct an investigation to confirm your belief?
A. We attempted to, but when it got to the point of getting close to determining what had actually took place, all evidence had been basically destroyed.
Q. Can you explain what that means?
A. Meaning that we were trying to get -- we were trying to get information on if we were able to still, as far as -- when I say "us," I mean Morpheus clients could still connect into Morpheus supernodes

so we could possibly look at any type of data going back and forth between the supernode and the client as far as the normal operations because we were suspecting that there was some type of information being transmitted somehow through KaZaA supernodes into Morpheus users that was changing information on users' hard drives.

And when it got to the point where we started determining what was going on, we couldn't investigate into it further because the -- this process had gone across the Morpheus users so fast

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that all Morpheus supernodes were shut down and rendered useless.

Q. How long a period of time did it take for all Morpheus supernodes to be rendered shut down and useless?

A. From what we calculated, it was about a six-week period -- a six-week period of time with the end of February being that last week. It started, actually, five weeks prior.

Q. Were you seeing any symptoms of the termination in the process five weeks earlier?

A. No, because the method that they were employing was undetectable until the week that they kind of launched the attack, I guess you could say.

Q. So as far as you could tell all of your Morpheus users were connecting and fully using the network up until approximately February 25, 2002, when you started getting word that users couldn't connect?

A. That's correct.

Q. And from February 25, 2002, or

thereabouts, how long did it take before essentially all Morpheus users has been terminated from the network?

A. Approximately one week.

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Q. You said you tried to take a look at the communications between user and supernode.

A. (Nods head up and down)

Q. Isn't the communication between a node and a supernode encrypted?

A. It's encrypted, but even being encrypted, we can look for similar patterns.

Q. Okay. You didn't have any special means to look past the encryption or to unencrypt the communications?

A. No, we did not.

Q. How did you arrive at the conclusion that the process had begun five weeks prior to February 25, 2002?

A. Because the error message that the Morpheus clients were receiving, was an error message that was generated by the client application, Morpheus, talking to a supernode that was not a Morpheus supernode.

Q. And how were you able to date that communication?

A. Because there had been a change in the supernodes that were on the network, and the five weeks before, KaZaA had released a new version of their software which was creating a new type of

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supernode.
Q. That would be KaZaA Version 1.5?
A. That, I don't remember specifically. It's been awhile. But it was a new -- a new version that they were very strongly doing auto-updates, and pushing very hard.
Q. So KaZaA issued an auto-upgrade of its client application but did not make that client application available to MusicCity?
A. That is correct.
Q. Do you know whether KaZaA made that client application available to Grokster?
A. Yes, I do.
Q. And what's the answer?
A. Yes, they did.
Q. They did. And Morpheus was the only licensee that was included, to your knowledge?
A. That's correct.
Q. Okay. How did you conclude that KaZaA was responsible for the update needed message that was being presented to Morpheus users?
A. Because there was -- there was some code or some data that was in the registry file that we saw was being changed, but it only got modified if the user connected into a KaZaA supernode.

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Q. The user did not need to connect into a KaZaA server residing in a KaZaA facility, it could -- the registry configuration could be changed by the user simply connecting to the KaZaA supernode?
A. Both. It could basically -- let's say if the Morpheus user can't connect into a Morpheus supernode, then it will basically connect into a

KaZaA supernode, and KaZaA supernode data -- and this part is just speculation -- depending upon if their root server is running, well the Morpheus client would then get a list of IP addresses of new supernodes which would be KaZaA. If Morphens is already connected into a Morpheus supernode and that supernode goes down, it's already got a list of IP addresses of other supernodes but they're not exclusive to MusicCity or Streamcast. They could be either Morpheus supernodes or KaZaA supernodes or Grokster supernodes. The list of supernodes that each client had was a combination of all of them. It was random.
Q. Let me follow up on that a second. When a node connected to a supernode, that node would receive a dynamic list of other users' supernodes that were active or fresh at the moment; is that correct?

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A. Not of users in general, specifically supernodes only.
Q. I said user supernodes?
A. Yes. Sorry.
Q. With that caveat it's correct?
A. That's correct.
Q. Would that list of user supernodes, that is propagated through the network, be generated by the supernodes themselves or would it be generated by a KaZaA server that was then -- and then the information would be propagated through the network?
A. It's generated by the active supernodes themselves with a copy on the root supernode.
Q. Okay. Did you finish your answer as to

your best understanding of how KaZaA was able to terminate Morpheus users?
A. No, not completely.
Q. Can you complete your answer?
A. After KaZaA launched their new version of the application for both themselves and for Grokster, as far as we know there was no major change for the client itself. The major change was when the client became a supernode and it had some modifications, most likely in the area of the encryption and the protocol and the versioning number.

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And what, then, happened is they had to wait for a period of time while they got enough clients out into the field that could turn into the -- I guess you could say the bad version of the supernode. If they would have tried shutting down the Morpheus clients immediately, there were enough Morpheus supernodes where the two networks would have physically fought each other. And since there were more Morpheus users, the Morpheus supernodes would have won and there would have been a separation, and there would have been two separate networks not connected to each other.
Q. So key to KaZaA's ability to terminate all Morpheus users was their ability to co-opt, for lack of a better word, Morpheus supernodes over a period of several weeks?
A. That's correct. Because as the KaZaA and Grokster supernodes were born, in essence, they would send out messages to the other supernodes that they were connected into, telling them to shut off if they were not the same version in the same protocol.

Q. Do you believe that KaZaA was able to propagate a message through the network -- strike that.
Do you believe that KaZaA was able to

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propagate -- let me start this again.
Do you believe that KaZaA was able to effect the listing of supernodes that would be provided to nodes, on a regular basis so that only KaZaA supernodes would be identified to nodes?
A. Over a period of time, that is correct.
Q. So in that regard it's your understanding that, while KaZaA was engaged in this process, the network itself was not randomly or systematically, pursuant to its own rules, distributing lists of supernodes, but, rather, KaZaA was influencing that list so that it would weed out Morpheus supernodes and only give nodes KaZaA supernodes?
A. That is -- that is pretty close to correct.
Over time they were statistically increasing the number of KaZaA supernodes that was in the list of 200 to be at least one KaZaA supernode that's one of the new supernodes, and they had to do that over a period of time and in essence a combination of that, and the fact that every time that there was a Morpheus supernode that was part of the network, it immediately shut down based upon the other supernodes starting.
Q. Any time a Morpheus user became a

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supernode it immediately shut down?
A. That's correct.
Q. From where would the Morpheus supernode get the signal telling it to shut down?
A. From the new KaZaA and Grokster supernodes.
Q. So as soon as a Morpheus user became a supernode that supernode would have some communication with the other existing supernodes, and as long as one of those other existing supernodes was a KaZaA supernode running the new software, it would send a message telling the Morpheus supernode to shut down?
A. Yeah, the other supernodes, all of them would have to be a new KaZaA or a new Grokster. Old supernodes could not exist, including old KaZaA supernodes.
Q. Of course as soon as they were elevated to supernode status they would be told to go back down to node status?
A. That's correct.
Q. This process of terminating Morpheus users was different from the process of engaging in a hard segregation?
A. Yes.

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Q. So KaZaA did more than just physically separate the network into two networks, a MusicCity network and a KaZaA network; is that correct?
A. That's correct.
Q. They ultimately terminated the ability of pretty much all MusicCity users to connect to the FastTrack network?

A. That is correct.
Q. Why didn't the MusicCity users simply form a private MusicCity-only network based on the old version of the software?
A. Because the denial-of-service attack that was launched on our data center was basically -- created in essence a quote, unquote, smoke screen that basically kept us from being able to see what was going on, and it caused confusion for a number of days as the second wave of the shutdown process started.
Q. Why didn't the Morpheus users automatically form their own private Morpheus network without any intervention on the part of MusicCity?
A. Because the first wave of the attack from KaZaA and the Grokster supernodes shut down all of the Morpheus supernodes. Without Morpheus supernodes the Morpheus users could not form their own network

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because they now became part of KaZaA.
Q. So at this point in time, February 25, 2002, and thereabouts, Morpheus MusicCity was still running the two root supernodes that we observed earlier in the documents?
A. I believe so.
Q. Okay. And but for the denial-of-service attack which disrupted the operation of those two root supernodes --
A. It was the operation of our whole data center, everything, all servers down.
Q. Including the two root supernodes?
A. Including those.
Q. So had those two root supernodes, the

MusicCity root supernodes been up and running, MusicCity could have attempted to have the users form a private Morpheus only FastTrack network?
A. That is correct.
Q. But with the two root supernodes out of service, the Morpheus users had no way of self-forming their own private Morpheus/FastTrack network?
A. They did. They would start forming, but they didn't have enough momentum to sustain becoming supernodes and staying supernodes because there were just so many KaZaA and Grokster supernodes over the

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previous five weeks that it had been generated.
Q. Couldn't it have been a very small network, a network of just a few Morpheus users?
A. The only way that that would have been possible is the software at that point had been modified so -- all the way back to 1.2, it's possible because there are 1.2 clients that are still out there that have formed their own networks. It's the later versions of the software where the ability for a client to stay alive had been eliminated in 1.3.3.
Q. So with the denial-of-service attack you lost the ability to turn off the auto-update?
A. No, it wasn't the auto-update. The root supernode would have been needed for those clients to connect into in order to get legitimate Morpheus supernodes. Since it wasn't there, it defaulted to the supernode list that was inside of the computer, which had been systematically weeded down to include primarily KaZaA and Grokster supernodes over a five-week period of time.
Q. So as a practical matter, without the

assistance of the MusicCity root supernodes the existing Morpheus users using the old version of the software couldn't realistically form a network?
A. Exactly. As soon as that would occur one

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of the machines would receive ultimately a signal from either a KaZaA or Grokster which would turn it into a shutdown mode that wrote data to the hard drive saying never become a supernode again until you've been updated.
Q. Did your investigation uncover any evidence that it was KaZaA that was responsible for the denial-of-service attack?
A. Unfortunately, none, because all of our main machines for registering data about any IP traffic coming in, the hard drive was completely -- it was gone.
Q. I understand.
At some point, after KaZaA had upgraded a sufficient number of its users to the new version of the client application, it had to flip the switch in the terms that we saw before to activate new protocols, be they the new protocol, the new encryption or both?
A. That's correct.
Q. How did KaZaA communicate to the nodes that it was flipping a switch?
A. Okay. The guys at Blue Moon, which we had talked about yesterday, had some type of mechanism where they could actually transmit or

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broadcast information to supernodes the same way as they would monitor supernodes, and in essence they were able to turn that on/off switch by sending that to one of the supernodes and then that supernode, like a virus, would proliferate it to all the other supernodes, and as one big giant chain reaction, they all would have this new piece of data.

That data was then transmitted into Morpheus clients and KaZaA clients, and that data that went into the Morpheus client is what basically allowed or caused that dialog box to pop up on the screen.

Q. Is that what is referred to as the "broadcast message" in Exhibit 213 when you say "the fix ran for about three hours, then KaZaA did a broadcast message"?

A. That is correct.

Q. Okay. And if you look at Exhibit 214, there's a reference to a "network config key."

A. Yes.

Q. What is the network config key?

A. It's basically -- it's data that we have no idea what it is, nor do our users, but we traced that to be part of what determines how the encryption physically functions, and we were using that to put

Page 414

the new encryption into the old Morpheus clients which made them work again.

Q. So was there a network config key in all FastTrack clients from the inception of Morpheus' involvement -- MusicCity's involvement with FastTrack?

A. To the best of my knowledge, from 1.3.3,

I know for a fact, yes. From previous versions I'm not -- I'm not positive.

Q. You became aware of the existence of the network config key with the 1.3.3 version; is that correct?

A. That's correct.

Q. Did MusicCity have a means to broadcast a message that would change parameters within the network config key of its users?

A. No, we did not.

Q. Is that because you would have needed some sort of encryption key or signature key in order to communicate with the network config key?

A. No.

Q. Why did you not have the ability to communicate with the network config key?

A. Because it was done through some form of a mechanism that communicated directly with the

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supernodes completely separate from any activity coming from the root supernode or the KaZaA server.

Q. So you would have needed a separate piece of software that would reside on one of your servers to broadcast messages to the supernodes?

A. It could be anywhere, could be a kid in their bedroom. It just needed to connect into a supernode anywhere on the planet to carry out its bidding.

Q. Well, what prevented just anybody, any user, from broadcasting a message to a supernode that would have an effect on the entire network?

A. Because they didn't have, I guess you could call it the back channel codes and methods on

being able to get into a supernode and communicate that data to them.
Q. Okay. So is it correct, then, that KaZaA and Blue Moon had the ability to send a message to a supernode that would then further propagate that message to all supernodes which would effect a change in the network config key?
A. That's correct.
Q. And by changing some of the parameters in the network config key, KaZaA and Blue Moon would have the effect -- strike that.

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And by changing some of the parameters in the network config key, KaZaA and Blue Moon would have the ability to effect a substantial change in the way the client applications behaved?
A. That is correct.
Q. Do you have any idea of what parameters could be affected within the network config key?
A. No, we do not.
Q. Do you have any idea of any parameters that could be affected in the network config key?
A. No, just the fact that if we copied that key out of a KaZaA application Morpheus would start working again.
Q. If you removed the network config key from a client application, Morpheus would connect to the network again?
A. No. If we copied that data from a KaZaA client and replaced the data in a Morpheus client, Morpheus would start working.
Q. Did you understand that the network config key needed to be digitally signed?

A. I was not aware of it.
Q. In Exhibit 214 Kirk writes that, quote: We may be able to take write privilege away from system for the network config key, close quote.

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Do you see that?
A. Yes.
Q. What does that mean?
A. That basically means changing -- the network config key is a parameter that's inside of the Microsoft registry file on all Windows machines. And by taking away the privileges of writing to that particular key meant that the KaZaA application could not modify that key inside of a Morpheus client.
Q. Did MusicCity attempt to do that?
A. Yes, we did.
Q. Were you successful?
A. No, we weren't.
Q. Did your experience with KaZaA over this period of time evidence to you that KaZaA had ultimate control of the network?
A. Yes, it did.

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Q. Okay. Maybe it would be easier if I didn't try and tie this to the document. Why don't you describe for us the metadata -- strike that. Why don't you describe to us how the

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Morpheus/Gnutella client uses metadata.

MR. BAKER: I'm just going to make just one formal objection: It asks for a narrative answer.

Go ahead.

THE WITNESS: It basically uses metadata based upon a specification by a company called LimeWire, but we have gone in and actually added, or actually modified some of the metadata fields that LimeWire specified, due to the fact that some of LimeWire's fields were a little ambiguous and confusing to users.

By Mr. Fabrizio:

Q. What were the fields that were ambiguous and confusing to users?

A. If I remember, one was SHA-1, which is the same as that hash we were talking about earlier.

Q. Is that a different hashing algorithm?

A. Yes, it is.

Q. How do you spell it?

A. It's like S-h-a and the numeral 1.

Q. Okay. So the Morpheus/Gnutella client uses a hashing algorithm that is called SHA-1?

A. No, LimeWire uses that as one of their metadata fields, and all of the fields that were

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confusing that users have no idea what it is, we took that information out.

Q. Okay. What metadata is contained in the LimeWire specification?

A. There's metadata on different types of media. An example, like, audio or video, and if I recall, I think also images.

Q. Okay. But the Morpheus/Gnutella

application does not extract any metadata from the files themselves?

A. Right now the only thing it extracts is ID3 tags.

Q. And ID3 tags are associated with MP3 files?

A. That's correct.

Q. What information is contained in an ID3 tag?

A. Potentially genre, author/artist, bit rate -- no, not bit rate, song name.

Q. Would album be contained in an ID3 tag?

A. Yes.

Q. Wouldn't bit rate be contained in an ID3 tag?

A. I'm not positive. I think so, but right now that's not being pulled out of the ID3.

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Q. Okay. For file formats other than audio does the Morpheus/Gnutella client extract any metadata?

A. No, it does not.

Q. Okay. So for video, for instance, it would not extract metadata?

A. It does not.

Q. Okay. When users make search queries on the Morpheus/Gnutella client do those other search queries match against metadata?

A. If it's a Morpheus client. If it's a non-Morpheus client it doesn't go against the metadata.

Q. Can you explain what you mean by that?

A. Most Gnutella clients use the filename to

search off of, and a few like LimeWire, Shareaza -- please don't ask me how to spell that one -- uses metadata.

The majority -- and also Swapper uses metadata.

Q. So is it correct that if the user who is offering the file is using a client that extracts metadata or is a Morpheus client which does extract metadata, a Morpheus user entering a search, that search will be matched against the metadata that's

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available?

A. For Morpheus clients that that search goes through. For other Gnutella clients, no, just a filename.

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How does the Morpheus/Gnutella client application know that an upgrade is available?

A. From our website. It checks our website, and our website has a version number on it. And depending upon if we've changed the version of the website, the client basically pops up a pop-up ad indicating a new version is available.

Q. So on some periodic basis each Morpheus/Gnutella client communicates with the MusicCity website to check to see whether upgrades are available?

A. That is correct. Just like the start page we were talking about, or the HTML content that goes into Internet Explorer.

Q. Does the Morpheus/Gnutella client

communicate with any MusicCity server in any other respect?

A. Advertising for bringing content into another Internet -- there's multiple Internet Explorer windows within the interface.

Q. For any other purposes?

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A. (Pause) I'm going through the different things in my head.

Yes.

Q. What are they?

A. E-mail.

Q. Okay. Does the Morpheus/Gnutella client communicate with any MusicCity computer for purposes of a log-in or authentication process?

A. No, it does not.

Q. Does the Morpheus/Gnutella client communicate with MusicCity upon launch of the application for anything other than ad content and web content?

A. Yes. The e-mail that's gotten from -- wait a minute. Sorry.

Did you say the first time they connect, the very first time, or if they've connected before and they're connecting again?

Q. The latter: They've connected before and they're connecting again.

A. Okay. If they're connecting again it basically sends to our web server the time they connected, the time of day they connected.

Q. So your web server keeps a log of which users are connected at what times of day.

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A. In the future it will; at the moment it's not working.
Q. At the moment it just receives the data but doesn't store it in a log?
A. The data doesn't even go to the server because the server's not even accepting it, but Morpheus is still sending that information.
Q. Does MusicCity run any software on its servers that can affect the performance of the client application.
A. Our web servers can.
Q. In what way?
A. There's two -- there's a thing in Gnutella called "flow control." There's -- and that basically is an algorithm that determines how searches go through the network as fa. as what the priority of the searches are. And the web server has the ability to choose between the Jtella flow control algorithm or the Morpheus 1.9 Nucleus flow control algorithm.
Q. And what's the difference?
A. We don't know. That's why they're both there. We put that there for the purpose of switching back and forth between one and the other to determine which one is the better.

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Q. So you can monitor and assess the search performance and ultimately choose the one that's better?
A. Not the search performance, the ability for the machine to stay -- for a Gnutella client to

stay connected to another Gnutella client opposed to constantly reconnecting over and over and over.
Q. And the idea is that you will monitor whether the Jtella or the Morpheus 1.9 flow control works better?
A. We will basically use one, hear what users are saying about how long they're staying connected to a particular computer, then we'll switch to the other and also get feedback from users in the field; and based on that we'll be able to determine which one to keep in the application and pull the other one completely out.
Q. So is there no other source of feedback other than the user feedback you've described in that manner?
A. As far as outside of -- feedback on what the client is doing, there's no other feedback other than the physical time as far as when it's connecting.
Q. And how does the MusicCity web server

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affect whether it's the Jtella or Morpheus 1.9 flow control that is being used by a particular client application?
A. The Morpheus application calls for data that's on one of the web pages, and that data basically is like a switch and indicates either use A or B.
Q. So the web answer can change a parameter within the client application to say use either Jtella or Morpheus 1.9?
A. Kind of like Morpheus changes that on its own based upon what value it sees on the web server.

Q. In making a change at the web server you can effect ultimately a change in the client application behavior?
A. Between the two flow controls, yes.
Q. Okay. Other than flow control are there any other variables that MusicCity can -- strike that.
Other than flow control are there any other variables that can be changed during communication between the Morpheus/Gnutella client and a MusicCity server?
A. Just the subvalues for the flow control.
Q. Is that different from the flow control

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itself?
A. The flow control basically has -- each flow control has various parameters, and those parameters can be changed either up or down.
Q. So you can control not only which flow control process is used, but you can fine-tune the parameters within each flow control process?
A. Within what we call a constraint, meaning that the application, no matter -- you could randomly throw any value in there that -- you can randomly place any value in the flow control that you want, but Morpheus will only deal with values within a certain area so you can't go and make the flow control crazy and cause problems with ISPs and Morpheus clients, causing havoc.
Q. And other than the flow control and the flow control subparameters are there currently any variables within the client application that you can effect from the MusicCity -- or any MusicCity server?

A. The information pertaining to the updates.
Q. You're referring to Exhibit 225 and the text box that appears on 225?
A. That's correct.
Q. So from the MusicCity web server you can

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modify the nature of the text that would appear in that box?
A. That is correct.
Q. Is there anything else?
A. That is it, with the exception of variations on this message box.
Q. Does that mean that in addition to sending a pop-up box in connection with upgrades, MusicCity can send comparable pop-up boxes based on other events or triggers that it chooses?
A. No. For basically requesting the user if they want to download additional applications.
Q. Third-party applications?
A. That is correct.
Q. For which MusicCity receives some form of compensation from the third party?
A. Not in all cases.
Q. In some cases?
A. Yes.
Q. Okay. Is there any -- strike that.
Given that the client, the Morpheus/Gnutella client application communicates with the Morpheus web server would there be any technological impediment to including initial variables in the client application that could be affected from the

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MusicCity web server?
A. Possibly yes because we've determined that what we're currently doing with those variables now is causing serious problems.
Q. What are the serious problems it's causing?
A. It's crashing half of our servers.
Q. Half of your MusicCity web servers?
A. That's correct.
Q. Because the volume of traffic is too high?
A. That is correct.
Q. With sufficient web servers that problem would go away?
A. We -- I would be -- the amount of servers in order to fix it would be -- it would be not possible for us.
Q. For instance, in the FastTrack platform, Morpheus/FastTrack clients communicated back to MusicCity servers?
A. But not as often.
Q. Okay. How often do Morpheus/Gnutella clients communicate with MusicCity web servers?
A. Every hour.
Q. Why is it necessary for them to

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communicate every hour?
A. Because if the flow control has a major bug in it, it can be turned off and the flow control that works fine can be turned back on.
Q. Does the communication occur at a preset

interval of one hour?
A. Yeah. Basically it's one hour from the time that the application was started. And some versions of it don't do that at all because we released a couple of versions. One version -- the latest version does; the prior version did not.
Q. So the ability of a Morpheus/Gnutella client to communicate back to a MusicCity server is a feature you added in later versions of the Morpheus/Gnutella client?
A. It already had the functionality to communicate to the web server. We added the functionality for it to actually -- instead of just reading the web page, to actually specifically look for information on the web page.
Q. And have variables change such as flow control?
A. Yes.
Q. Has MusicCity issued more than one version of the Morpheus 2 version of the client

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application? In other words, has there been a 2.1, a 2.1.1, a 2.2?
A. Yes.
Q. How many versions have been issued?
A. Sixteen.
Q. Sixteen? Over what period of time?
A. Five days.

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I'm marking as Exhibit 227 a screen shot of what I believe to be a page within the Morpheus

client application, Morpheus/Gnutella client application, and as 228, a screen shot of what I believe to be a page from the Morpheus 2.0 client application.

(Marked Exhibit 227)

(Marked Exhibit 228)

THE WITNESS: (The witness reviews the documents.)

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By Mr. Fabrizio:

Q. Mr. Smith, can you identify Exhibit 227?

A. Yes.

Q. What is 227?

A. It is a dialog box from the Morpheus application.

Q. The Morpheus/Gnutella client application?

A. That is correct.

Q. What does it reflect?

A. It is reflecting user options, or parameters.

Q. And is it the case that the Morpheus client application contains user options for filtering search results based on certain variables reflected in Exhibit 227?

A. That's correct.

Q. How does the Morpheus client application filter search results that don't contain valid metadata?

A. If the metadata is corrupt and it's not a proper -- it's not in the format that it should be, it will ignore that search result.

Q. Does the Morpheus client application compare incoming metadata to a database of metadata

in the correct form, or does the client application

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just know the correct parameters for metadata?

A. It knows the correct parameters. It does what's called checking to see if it's a valid XML file.

Q. Okay. How does the Morpheus/Gnutella client application filter search results of file types that could contain viruses?

A. That's the same as a person going down into -- let's see, where is it?

Basically, an example, vbs files tend to contain viruses, so if a person clicks on that it will not display vbs files. They will still go through their system as far as the search request going to other clients, but you will not physically see them appearing on the screen.

Q. Okay. So the Morpheus/Gnutella client application filters by file extension?

A. On that particular one, yes.

Q. Okay. And how does the Morpheus/Gnutella client application filter search results that contain bogus files?

A. On that one, what it does -- let me remember the algorithm on that one.

Actually, on that one -- on that one I believe that it is not implemented yet.

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Q. Okay. Can you identify Exhibit 228 for us?

A. It's another screen shot of the Morpheus/

Gnutella application.
Q. Okay. And you see in the box on the left-hand side it contains what appear to be genres of music; is that correct?
A. That is correct.
Q. All right. How were those genres of music selected?
A. They were selected from the original Morpheus 1.3.3 client.
Q. So they were imported from the Morpheus/FastTrack application?
A. They were viewed on the screen and retyped into another document.
Q. So it was actually a Morpheus employee who typed in the new -- strike that.
It was actually a Morpheus employee who typed in the same genre categories into a Morpheus/MusicCity document?
A. That is correct.
Q. Why did you include a category for Top 40?
A. Because it was in the other application.

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Each of the various ones were not qualified based on any particular logic or reason other than the fact that it was in the original application.
Q. Did you expect that users would be offering music that fell into the category of Top 40?
A. No, that's not correct.

* * * *

MR. FABRIZIO: Okay. I have -- while off the record, I have marked and given Mr. Smith an opportunity to review two documents. The first is

Exhibit 229. It's got an ID No. 544361, an e-mail from Darrell Smith to Danderson@directgate.net.
The second is Exhibit 230. It has an ID No. 171661, and it is an e-mail from Mr. Weiss to Mr. Smith, dated February 17, 2001.
(Marked Exhibit 229)
(Marked Exhibit 230)

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By Mr. Fabrizio:
Q. Mr. Smith, can you identify Exhibit 229 for the record?
A. It's an e-mail from myself to D. Anderson or Derek Anderson.
Q. And who's Mr. Anderson?
A. He is a network administrator, or basically he fixes the hard drives when the hard drives break and fixes the physical equipment when we've been hacked.
Q. He's a MusicCity employee?
A. No, he's an outside contractor.
Q. He's an outside contractor, working at the direction of MusicCity?
A. Yes.
Q. Okay. Is --
MR. BAKER: I need to get copies of that.
MR. FABRIZIO: Oh, I'm sorry.
MR. BAKER: Okay.
By Mr. Fabrizio:
Q. Is Exhibit 229 a document that you sent to Mr. Anderson on or about March 7, 2001, and maintained in the ordinary course of your business for MusicCity?
A. Yes, it is.

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Q. Okay. Does Exhibit 229 refer to that period of time when MusicCity was running an OpenNap service?
A. That is correct.
Q. Okay. And does Exhibit 229 reflect that MusicCity attempted to block the law firm of Mitchell, Silberberg & Knupp from having access to the MusicCity OpenNap?
A. That is correct.
Q. And does Exhibit 229 also reflect that MusicCity tried to block netpd from having access to its OpenNap system?
A. That is correct.

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Deposition of
Michael Weiss
February 7, 2002

* * * *

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Q. Was there a discussion with anyone at MusicCity about a way to attract Napster users at any time?
A. Yes.
Q. When is the first such discussion you can recall?
A. I believe the fall of 2000.

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Q. And who was that discussion with?
A. I can't recall specifically.
Q. But it was -- do you remember where it occurred? Was it at MusicCity's headquarters in Tennessee? Was it in a conference call?
A. I have never been to the headquarters in Tennessee, so I know it wasn't there. It could have been in a conference call or a board meeting.
Q. What do you recall about the discussion as how to attract Napster users?
A. In order to use the OpenNap technology, you had to have a Napster software already installed on your computer.
Q. And what was the discussion then?
A. There was already an installed base of Napster software on people's computers.
Q. So did you have discussions about how to get the OpenNap software to people who already had Napster software installed?

MR. BRIDGES: Objection. Assumes facts not in evidence.
THE WITNESS: Yeah.

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Q. The reference in the next sentence on this same page that says, quote, "They have already

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disabled the ability for third parties, such as Media Enforcer, to look into either network," what is that referring to?
A. There was a software by a company called Media Enforcer that I believe allowed -- I don't know if I used the term at the time or if the term was used, but I'll use it today -- called sniffing the network, which was to sort of take a snapshot of what users were using that for, the network for, and they were selling the technology to other companies.
Q. Why was it of interest to MusicCity to ensure that a company like Media Enforcer could not take a snapshot of what your network was being used for?
A. I don't think it was -- it was of an interest to MusicCity. It was something that FastTrack had enabled at one point.
Q. What was your understanding of why FastTrack enabled that to happen?
A. I think they had privacy concerns for their users.
Q. Did you have any discussions with anyone at FastTrack about disabling the ability for companies like Media Enforcer to take a snapshot of what the

network was being used for?

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A. I believe we had discussions, but I don't recall what those were.
Q. At any point while you were CEO of MusicCity, did MusicCity communicate to FastTrack that they did not want that kind of system to be disabled?
A. No.

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Let me have marked as Exhibit 112 the following document.
(Exhibit No. 112 marked)
Q. Handing you Exhibit -- You've been handed Exhibit 112. Please take your time and look at it and let me know whether you recognize it. It was produced by KVO, Bates KVO414 through 447.
A. (Perusing.) Yes., I recognize this.
Q. What is this document?
A. This is a power-point presentation.
Q. Is this the power-point presentation that Mr. Griffin showed to you in February 2001?

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A. I believe so.
Q. Did you play any role in preparing any part of this document for presentation?
A. No.
Q. So this is what Mister -- to your knowledge, what Mr. Griffin prepared?
A. Yes.
Q. This is what Mr. Griffin showed you, correct?
A. Yes.
Q. Let me - - Well, what do you recall about - - We can refer to the document too, but what do you recall Mr. Griffin telling you about MusicCity during that February 2001 power-point presentation?
A. That he had created a peer-to-peer file-sharing service.

Q. What else do you recall him saying, if anything?
A. That they were going to create another peer-to-peer file-sharing service called Morpheus.
Q. What else do you recall him telling you?
A. And that they wanted assistance migrating users from one service to the other.
Q. Do you recall him saying anything else?
A. No.

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Q. Did Mr. Griffin tell you how many users the first peer-to-peer service that he had created had?
A. I think so.
Q. What did he tell you?
A. I can't remember, but I know that they were in this document (indicated).
Q. Was there any discussion of Napster during this presentation?
A. Yes.
Q. What do you recall being discussed about Napster?
A. That people considered MusicCity to be a competitor of Napster.
Q. Did he say anything more about that, meaning why people thought that?
A. Because with both tools you could share files.
Q. Did he himself express an opinion as to whether MusicCity was a competitor of Napster?
A. He said that MusicCity was a competitor of Napster only in the way that you could share files but

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that it was very different from Napster.
Q. Did he explain to you how it was different?
A. Because you could share all different types of files and because they didn't provide software.
Q. Who didn't?
A. MusicCity did not provide software. They just had servers.
Q. So other than the fact that MusicCity could share different types of files and that MusicCity did not provide the software, only the servers, did Mr. Griffin give you any other differences between MusicCity and Napster?
A. That's all that I can recall.
Q. And the comparisons that you were discussing now were between the first peer-to-peer system and Napster, correct?
A. Yes, sir.
Q. Did Mr. Griffin make any comparisons between the Morpheus system that he was creating and Napster during that power-point presentation?
A. I can't recall.
Q. During that conversation, did you have any discussions about whether MusicCity should be--whether the PR surrounding MusicCity should say anything about a comparison to Napster?

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A. During that conversation --
Q. Yeah.
A. -- I can't recall.
Q. Did you have such a conversation at some point with Mr. Griffin?

A. Yes.
Q. Was that before or after this power-point presentation?
A. I think it was after.
Q. As of the time of this power-point presentation, however, had you had a conversation with anyone else at MusicCity about whether MusicCity should be compared to Napster in the PR campaign?
A. Not that I can recall.
At that point? By the conversation --
Q. Yes.
A. Not that I can recall.
Q. Well, let me ask you a couple of questions about this document. If you look at the second page of it, which is KVO415, there are some quotes from certain publications --
A. Uhm-hmm.
Q. -- the first two of which make reference to Napster. Was there any discussion of either of these two quotes during that meeting you had with Mr. Griffin?

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A. Yes.
Q. What was discussed?
A. That people, including reporters, thought that MusicCity was a competitor to Napster.
Q. Did Mr. Griffin tell you why he had put these quotes in this presentation?
A. No.
Q. Did he express to you a desire to use these quotes as part of a PR campaign?
A. Not that I can recall.
Q. If you look at the next page sir, which is KVO416, the first bullet point there says, "The #1

Alternative Network to Napster in 30 days - Growing at a rate of adoption exceeding Napster." Do you see that?
A. Yes.
Q. Do you recall that being discussed?
A. Yes.
Q. What do you recall about that discussion?
A. Exactly what it says, that it was an alternative network to Napster in 30 days.
Q. And 30 days from what?
A. I don't know. I . . .
Q. Was there any discussion during that presentation about any injunction issued by a court against Napster?

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A. I don't -- I'm not a lawyer. What is injunction issue?
Q. Was there any discussion about a court proceeding against Napster during your conversation with Mr. Griffin that we're talking about here?
A. During that conversation, I can't recall that.
Q. Okay. Was there any discussion during that conversation about Napster beginning to filter files from its service?
A. Yes.
Q. What do you recall about that?
A. That Napster was filtering files, and users were not using Napster as much anymore.

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Q. You've been handed Exhibit 113. Please take a look at it and let me know if you recognize it.
A. (Perusing.) Yes, I recognize this.

Q. What is it, sir?
A. This is another presentation created by StreamCast.
Q. Were you present during that presentation?
A. I can't recall.

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Q. Did you have any -- Do you know what that presentation was used for?
A. I believe this was used for investors.
Q. Do you know which investors were shown this presentation?
A. No.
Q. Did you play any role in creating that document?
A. I don't think so, no.
Q. How did you first come to see this document or this presentation?
A. I can't recall.
Q. But you do recall that you did see it?
A. Yes.
Q. And it was provided by MusicCity or StreamCast?
A. I think so.
Q. Did you ever learn who at MusicCity of StreamCast put this together?
A. I think Steve Griffin put this together.

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Q. On page 189, the second bullet point talks about: "Engineering" -- "Engineer backwards compatibility to leverage Napster's 50 million user base." Do you see that?

A. Yes.
Q. Did you discuss that bullet point with anybody at MusicCity?
A. I don't recall that bullet point.
Q. Did you ever have a discussion with someone at MusicCity about MusicCity being able to get Napster users to start using any of the MusicCity services?
A. Yes.
Q. With whom?
A. I believe that was with Steve Griffin.
Q. Do you recall when that conversation took place?
A. I think it was the first power-point presentation that he gave that you've listed as Exhibit 112.
Q. 112?
A. Uhm-hmm.
Q. What was said about -- What was said about that topic by Mr. Griffin to you?
A. That Napigator.com had created some backwards compatibility with Napster in their software.

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Q. Right. But do you recall having a conversation about that, regardless of whether the term was used, about some kind of low profile having to do with copyright owners or people who enforce copyrights?
A. Yes.
MR. LACKEY: Objection; vague and ambiguous.
Q. What do you recall?
A. I recall that our objective was to migrate Morpheus users -- or MusicCityusers to the new Morpheus platform and that the -- we needed to preserve the

street credibility in order to do that; that users would not move to a system that they thought had a brand like Coca-Cola. They wanted something that was like something they would create themselves, yet MusicCity felt that this -- and at the same time, a side benefit would be that keeping, you know, a low-profile appearance, where you're not out there using your media opportunities as a soapbox, would keep them from upsetting people that they're trying to partner with, such as the RIAA, Motion Picture Association, et cetera.

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MR. BORKOWSKI: I'll have marked as Exhibit 126 the following document.
(Exhibit 126 marked.)

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Q. You've been handed Exhibit 126. It's a lengthy document consisting of a series of handwritten notes, or several sets of handwritten notes. It's Bates stamped KVO78 through KVO139. Take your time, if you will, and look through that document and let me know what it is, to the extent you can identify it.
A. (Perusing.) These are notes written -- They could be random notes. They could be notes that were written quoting somebody or trying to quote somebody that was talking in a conversation.
Q. Are they your notes?
A. I think most are my notes.
Q. Is any portion of this not your notes, in particular, referring to the last several passages of this document?
A. Yes, the -- My notes stop at -- If these are

all the same handwriting up until a certain point, my notes stop where it says, "No contact for KVO for 96 hours," and that's approximately right here (indicated).
Q. I was going to ask you to -- At the very bottom, there are numbers, "KVO" --
A. Okay. KVO000125.
And then notes -- It looks like Jonas Allen's handwriting start.
Q. And that handwriting starts in KVO126?

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A. Yes.
Q. Okay. And does that go through the remainder of the document?
A. Yes.
Q. Do you have a personal practice as to when you take notes or when you don't take notes in the course of your work?
A. It's pretty random, but sometimes I take notes when someone is talking, and I record those notes.

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Q. At the bottom of this page, there's a few entries. There's one that says, "Don't want to look corporate." Do you see that?
A. Yes.
Q. What is written directly under that?
A. "Do Napster better."
Q. Do you know that that's referring to?
A. It looks like that's a goal at MusicCity, to do Napster better than they did.

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Q. If I could direct you to page 90, do you know what these are notes of?
A. These are notes about OpenNap and Napigator.
Q. And do you know in what context you took these notes?
A. No. These were I'm sure notes taking - - recording thoughts by Michael Weiss or Steve Griffin.
Q. Point No. 3 there. Could you read that out

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loud for me?
A. "Business model that would allow you to compete more squarely with Napster."
Q. Did you discuss that with anyone at MusicCity, of a business model whereby MusicCity would compete with Napster?
A. Not that I recall, but it says, "Business model that would allow you to compete more squarely with Napster." I don't know who that is for.
Q. On page 94, about the first legible line there, it says "Person" something. Do you see that? I think it says "Person." It's right under "3.5."
A. Yes.
Q. Could you read that for me?
A. "Person who can monetize server traffic wins."

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Q. All right. Let me ask you to turn to page 126. Now, you told us before that these notes are from Jonas Allen's handwriting, correct?
A. Yes.

Q. All right. This particular one here, it says, "4/10 meeting with StreamCast Networks & MusicCity." Do you remember attending an April 10th meeting with representatives of StreamCast and MusicCity?
A. I don't remember what date, which dates that we attending meetings on with MusicCity.
Q. Do you recall meetings in April, however?
A. Yes.
Q. And let me . . . Yeah, let me ask you to look at - we're still on page 126 - the second sentence there that says, "Our achilles heel is a centralized directory service for file-sharing." Do you see that?
A. Yes.
Q. All right. Now, I'll ask you to go back in that document to page 133, which are your notes of a meeting that you've titled "StreamCast Meeting," and if you see four lines, four written lines, under that title, it says, "Achilles heel is centralized directory." Do you see that?
A. Yes.

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Q. Does that in any way refresh your recollection as to whether you attended the meeting that's referenced in Mr. Allen's notes as being on April 10th?
A. Yes, it does.
Q. So is it your understanding that you attended that meeting?
A. Yes.
Q. Do you recall whether that was a face-to-face meeting or - -
A. I don't.
Q. I'm sorry?
A. I don't recall.

Q. On page 128, please. It still appears to be notes of this meeting. A third of the way down, it says -- there's a star, and it says something I can't make out, but then it says "RIAA can't penetrate the StreamCast Networks network or see what files are being transferred because the network is encrypted." Do you see that?
A. Yes.
Q. Do you recall discussion at that meeting about encryption on the MusicCity Network or the StreamCast Network?
A. I remember that the network is encrypted, but I didn't understand how. I didn't understand the

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technology.
Q. Was there any discussion as to whether one of the reasons for encrypting the network was so it would be difficult for copyright owners to see what was being traded on the network?
A. Not that I recall.
Q. Did you ever participate in a conversation in which that was stated by anybody?
A. Not that I recall.

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Q. Let me refer you up above the line there to what might be a different -- notes of something else. It says, "Existing users will trade illegal files, sure, but they also are a network that wants music even if it's encrypted & buyable." Do you see that?
A. I'm sorry. Where is this?
Q. This is still on page 137, but it's above --

A. Okay. Yes.
Q. -- the title.
Were you involved in any discussions or meetings with MusicCity in which somebody stated that existing users will trade illegal files.
A. Yes.
Q. Do you recall when that - - Was that a meeting or a telephone conversation?
A. I don't recall.

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Q. Let's focus on Exhibit 110, again the first line: "We thank MusicCity for a productive and passionate meeting in Portland on Tuesday, April 11." Without focusing specifically on whether it was the 10th or the 11th, did you attend a meeting in Portland with MusicCity personnel?
A. I did attend a meeting in Portland with MusicCity personnel in April.
Q. Where was the meeting in Portland?
A. At KVO Public Relations.
Q. Where in the office did the meeting take place?
A. In our large conference room.
Q. Roughly how long did the meeting take?
A. A couple hours.

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Q. Was it a morning meeting or an afternoon meeting?
A. I think it was a midday meeting.
Q. Was lunch served?
A. I can't recall.

Q. Were you there for the entire meeting?
A. As much as I can remember, I was there.
Q. Who else from KVO attended all or part of that meeting?
A. Sharon VanSickle, myself, Than Clevenger, Jonas Allen.
Q. Anybody else?
A. That's all that I can recall.
Q. Who from MusicCity attended that meeting?
A. Steve Griffin and Michael Weiss.
Q. Anyone else?
A. That's all that I can recall.
Q. Did Darrell Smith participate in any way in that meeting?
A. I don't know if it was that meeting that Darrell Smith participated in. I believe that he was -- joined in for a conference call at some point.
Q. During that meeting, you believe?
A. Yes.
Q. All right. Now, let's go back to Exhibit 126,

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the handwritten notes, and let's go back to page 128. We're looking at the notes that you've identified as Jonas Allen's notes.
In the course of your work at KVO, do you ever have occasion to review Mr. Allen's handwritten notes?
A. No.
Q. If you look about a little less than a quarter of the page down, there's a star. Next to the star, it says, "Bots f/RIAA can't penetrate the StreamCast Networks network or see what files are being transferred because the network is encrypted." Did anybody at MusicCity say anything to that effect during this

April 10th meeting?
MR. LEVIN: Objection; asked and answered.
MR. LACKEY: Objection; asked and answered.
A. I don't remember the conversation.
Q. So the answer is: You don't remember whether anyone from MusicCity said words to that effect?
A. Right. I don't remember what it was about.
Q. Do you have any reason to believe that anyone from KVO made the statement that's reflected in these notes?
A. And could we state which statement that is again? I'm sorry.

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Q. Yes. It's the one that starts with a star and says, "Bots f/RIAA," and ends with, "because the network is encrypted."
A. Is this on page 128?
Q. Yes, it is. It's right near the top.
A. Right. Okay. I'm sorry. There was a bend in the paper there.
Q. Okay.
A. (Perusing.) I don't think anyone from KVO said this.
Q. I'd like you to turn to page 114 of this exhibit. These are your notes?
A. Uhm-hmm.
Q. At about the same place near the top of the page, there's a dash. It says, "Their bots can't penetrate Morpheus." Does this refresh your recollection as to whether anyone from MusicCity made a statement to this effect during that meeting?
MR. LEVIN: Objection; asked and answered.

A. This does not refresh my recollection. I don't remember discussing bots that can't penetrate Morpheus.
Q. I'd like you to turn to page 129. At the top, it says, "MusicCity business plan conference call 3/28/01." And again, I understand these are the notes

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you've identified as being Jonas Allen's.
Did you participate in a MusicCity business plan conference call on March 28th, 2001?
A. I don't remember what the content of the conference call was on the 28th.
Q. Do you remember participating in a conference call on March 28th?
A. I don't remember the exact dates of conference calls.
Q. Take a look at the bottom of this page. Near the bottom of the page, there's a line that says, "Do NOT" - - and "not" is written in larger letters. "Do NOT use 'decentralized directory.'" Looking at that line, does that refresh your recollection as to whether you participated in a MusicCity business plan conference call on or around this date?
A. I remember this instruction, but I don't remember when we discussed it or if it was - - what the context - - the subject, the overall subject of the phone call was supposed to be about.
Q. What do you remember about the instruction: "Do not use 'decentralized directory'"?
A. At one point, Darrell Smith tried to explain that Morpheus was not a decentralized directory, as technologists know of it, but that for all intents and

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purposes it was, that it was some new type of directory. And we kept on using "decentralized directory" because we knew that's what we thought it was, and but he insisted it wasn't, and we thought it was splitting hairs, really.

Q. Did he state an opinion to you as to why he believed it would be better if you did not use that term?

A. He did. And it was highly technical because he was a CTO, and I don't think we really grasped it.

Q. Did he express to you, in terms of public relations, as to whether it would be a bad or a good idea to use that term in connection with MusicCity?

A. No. He said that in terms of just being accurate from a technologist's point of view.

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Deposition of
Daniel B. Rung
June 5, 2002

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Q. Let me ask you if there came a time when you learned of a company called Swaptor, Ltd.

A. Yes.

Q. And how did you learn about that company?

MR. PAGE: Objection. Vague and ambiguous. You can answer.

THE WITNESS: We started that company, I started that company.

MR. KENDALL: Q. Will you tell me when that company started?

A. I'm going to have to guess. If that's adequate?

Q. Please

A. I would have to say a year and a half ago, and that's a big ballpark.

Q. All right. Let me -- and I'll show you in a minute the certificate for incorporation for Grokster, which is dated June 15th of 2001.

Would it have been about the same time, as started, or would it have been about the same time, as best you can recall?

A. It definitely would have been before, but my recollection might be three to six months.

Q. And what was the purpose of Swaptor?

A. It was to provide a file-sharing tool.

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Q. And what file-sharing tool did Swaptor utilize?

A. I'm not sure I understand your question.
Q. Was this an OpenNap kind of file-sharing?
A. Yes, it was.
Q. Did you -- do you know what kind of source code you used for Swaptor's OpenNet operation -- OpenNap operation? Excuse me.
A. Yes. It was File Navigator.
Q. Was that --
MR. BORKOWSKI: Could I have that read back? I didn't hear it.
(The last answer was ready by the reporter.)
MR BORKOWSKI: Thank you.
MR. KENDALL: Q. And was File Navigator an open-source software, or did you have to get a license for it?
A. I don't believe it was open source, and there was no formal license that was signed either.
Q. Can you tell me what you did to organize Swaptor, Ltd?
A. It was incorporated in Nevis.
Q. Was there a particular reason you chose Nevis?
A. For tax reasons.

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MR. KENDALL: Q. Does Grokster have any kind of written business plan?
A. No, it does not.
Q. Do you have any plan, written or unwritten, which will attempt to make Grokster as profitable as possible?
A. Well, I guess an unwritten -- goal maybe.
Q. How would you define those goals?

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A. Well, the goal is to get as many of the Grokster programs installed on as many users' computers as possible, because we benefit from the advertising on those clients, and also to get them to use it more, if possible
Q. And by benefiting from the advertising -- and I'll show you some contracts in a while -- you mean get as many impressions as possible for the ads because that will earn Grokster more money; is that correct?
A. Yes

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Q. And when did the adult filter get added to the FastTrack software?
A. I'm not sure whether that was part of 1.3 or 1.5. I would say six months, roughly.
Q. Was that – and how was that feature added?
MR. PAGE: Objection. Calls for speculation.
MR. KENDALL: Q. Do you know how the feature was added?
A. From my viewpoint, we received a new copy of the client, and we loaded it up.
Q. And then each user would have to download the new version of the client; is that right?
A. Basically.
Q. And how many upgrades from June of 2001 to the present has Grokster implemented?
A. I don't know exactly, but four or five.
Q. And in each one of those the procedure is simply to have the registration server indicate as the user logs on please download new software?
Is that the way it works?
MR. PAGE: Objection. Vague as to time.

THE WITNESS: Yeah. Could you clarify the time?

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MR. KENDALL: Q. Well, let's take it from the beginning. The very first time you upgraded the software, how did the upgrade proceed?
A. I believe – I don't have personal knowledge of this. I don't really understand how it all works, but my understanding that I do have, if I can clarify it that way, is that when a person logged on at that time, it did go to the registration server, and if there was a new download available, it would tell them and actually, I believe, offer it to them and attempt to install it if they said yes.
Q. If they said no, would their software continue to interoperate with the upgraded client?
A. At the time, yes.
Q. Did there come a time when they had to say yes or else their old software would not interoperate with the new upgraded client?
A. Version 1.5.
Q. Were there any other times – I'll have some questions about that.
Version 1.5 was after the Morpheus cutoff, was it not?
A. Actually, I retract – if I can clarify one thing.
Q. Sure, please.

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A. I'm mistaken. I believe there was one version of 1.3 that also they had to take, and then there was

1.5 they had to take.
Q. Okay. And the version of 1.3, did that have to do with a hack or somebody who created an interoperable client that FastTrack wanted to not have interoperable?
A. That's my understanding, yes.
Q. Would that have been the Gift project, G-i-f-t?
A. That is also my understanding.

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Q. Let me go back in time. I asked you a question about an earlier update, and you recalled that there was an attempt by some people to hack into the FastTrack system back in 2001, the so-called Gift people. What do you remember about that incident?
A. You mean everything?
Q. Yes.
A. Let me see. I remember at the time being aware that the Gift people had developed some way to connect to all of our other clients, and I recall discussing that, either via e-mail or phone, with Edwin, who basically informed me that a new upgrade would be coming, which would take care of the problem.

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Q. Do you remember when that new upgrade arrived?
A. No. I believe it was the 1.3 or one of the 1.3 versions, but that's all I can --
Q. Do you remember if it was the 1.2.3 version?
A. Just 1.3, but I don't know whether it was .1, 2, 3 or whatever.
Q. Let's mark -- let me mark another e-mail to

consider with Exhibit 23, which we just marked. This will be 25, and this is an e-mail from --

MR. PAGE: David, can you give the exhibits to the reporter to mark so he can stop playing secretary?

MR. KENDALL: Please mark that Exhibit 25. It is a single e-mail dated February 22nd, 2002, from somebody whose name I will mispronounce, but it appears to me Joao Carlos de C. Torquato.

(Whereupon, Plaintiffs' Exhibit 25 was marked for identification.)

MR. KENDALL: Q. Mr. Rung, do you recognize --

A. I still need to --

Q. Oh, I'm sorry. I'm going to ask you if you recognize that person. Actually, you are writing the e-mail to this person.

A. Yes. I see that. Okay. Yes.

Q. This refers to Version 1.5. First of all, who

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is the person that you're e-mailing?

A. This is a person that maintains a mirror -- a mirror -- a mirror site of our download, and I'm not sure -- I think this person is in South America, but I'm not really sure exactly. But that's -- other than that, that's all I know about him.

Q. After you had done the upgrade for the Gift hack, were there any more problems with Gift that you were aware of?

A. No. That seemed to take care of the problem.

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MR. KENDALL: Q. You said a moment ago that

there was a period of time where one of the Grokster servers functioned as a supernode.

My question is: Do you know what the duration of that period was?

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MR. PAGE: Let me object that it misstates his prior testimony, but you can answer.

THE WITNESS: It was up, I would say, approximately six months.

MR. KENDALL: Q. And did you have to do anything to cause that – I take it that that computer is no longer functioning as a supernode?

MR. PAGE: Same objection.

THE WITNESS: And that's correct.

MR. KENDALL: Q. Okay. Did you have to do anything to cause it not to function as a supernode.

A. Are you going to do your same objection?

MR. PAGE: No, no. That one you can answer.

THE WITNESS: We – I ordered my son to remove it from the server at one point in time.

MR. KENDALL: Q. Okay. And do you recall when that would have been?

Would that have been January or February?

A. I believe sometime around the first part of December.

Q. Was there a particular reason you had for ordering him to do that?

A. Yes. I discovered we didn't need it and weren't supposed to have it in the first place.

Q. And how did you discover that, A, you didn't

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need it, and B, you weren't supposed to have it in the first place?
A. Reading about the RIAA announcement of the lawsuit against us.
Q. Did you have any conversations with somebody besides your counsel about that?
MR. PAGE: I'm going to object as vague and ambiguous on "that."
Are you talking about the lawsuit or the –
MR. KENDALL: Q. I'm talking really about the removal.
A. Yes.
Q. Whom did you have discussions with?
A. I'm not positive whether it was Niklas or Edwin, but it was one of them.
Q. And what did you say to either Niklas or Edwin, whichever it was?
A. I got them on the phone and basically said, "In this lawsuit, it says we've got this thing running, and we're the only one out of the three named parties that have this thing running. Why do I have it running and they don't have it running? Why do I need this when they don't need this?"
And basically, they said, "Well, you don't need that, and you should never have had it up in the

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first place." And I said, "So I should take it down, and everything will still operate properly?" And they said, "Yes," and, okay, so I took it down.

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MR. KENDALL: Q. Would you turn, please, to

your answer, which is Exhibit Number 3, and I'm going to direct your attention to paragraph 46 of the answer.
A. Well, I'm disorganized. Here's 4. I think I've got it here. All right. I'm sorry. Where are we?
Q. It's paragraph Number 46 in the answer. It's on page 3.
A. Okay.
Q. That paragraph indicates that communications between Grokster users and Grokster's registration server are encrypted. Do you see that?
A. Yes.
Q. My question to you first of all is: What is the Grokster registration server?
MR. PAGE: Objection. Assumes facts, vague as to time. You can answer.
THE WITNESS: Yeah. I was just thinking of how to answer it. The -- when we first -- that's the KaZaA server software that was referred to in the agreement between us and Consumer Empowerment. And really, what that software did, it's my understanding, is: It performed this registration

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function. And so when I referred to the term "registration server," I'm referring to our server at that time that was running that software.
MR. KENDALL: Q. And that would have been up until maybe December, is that right, until you made the change that you had testified earlier?
A. That would be roughly correct.
Q. Okay. Do you know what kind of encryption protects the communications between the users of Grokster and the registration server during the time period that registration server was up?

A. I have no idea.

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Q. Okay. I'd like marked as Number 47 -- as Exhibit 47 a two-page e-mail with one MWinkelmann, who appears to be a German journalist. It's dated January 25, 2002.

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(Whereupon, Plaintiffs' Exhibit 47 was marked for identification.)

THE WITNESS: Okay.

MR. KENDALL: Q. Mr. e-mail does not come from support. It comes from Henry Wilson, relations@grokster.com. Is there any reason for that?

Excuse me. Is the reason for that because you're responding to a journalist who is apparently working on an article?

A. Most probably.

Q. You write back to Mr. Winkelmann, "Grokster is entirely supported by ad revenue at this time. The only other possibility would be some type of fee for the service, but we do not believe the market will support that at this time." Do you see that?

A. Yes.

Q. Was that sentence based on any market research you had done?

A. No.

Q. Can you tell me what it was based on?

A. Just reading about what other software companies -- the results of their efforts to charge versus a free versus a pay model out there in the marketplace.

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Q. Could I have marked as Exhibit 41 an e-mail dated March 2nd –

A. 41?

MR. PAGE: The last one was – I think it's 60.

MR. KENDALL: 60 – as Exhibit 60 a one-page e-mail dated March 2nd, 2002, between support and Asad.

(Whereupon, Plaintiffs' Exhibit 60 was marked for identification.)

MR. KENDALL: And I'm sorry. Is this –

MR. PAGE: This is 60.

THE REPORTER: 60.

MR. KENDALL: This is 60. Okay.

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THE WITNESS: Okay.

MR. KENDALL: Q. Again, Mr. Rung, this is an is an e-mail from you under the same of support; is that correct?

A. Yes.

Q. When you received the e-mail saying, "I downloaded fast and furious and mummy returns and I can only heard the sound. I can't watch the video. What would I have to download to watch movies," when you saw the post, did you do anything to investigate whether those were coyprighted works?

MR. PAGE: Objection. Assumes facts.

THE WITNESS: Can I expound on this a little in my answer?

MR. KENDALL: Certainly.

THE WITNESS: The – I get on the order of 100 to 200 support e-mails a day, and I answer all those personally, the ones that are answered. As a practical matter, you know, it's just – when I go through them, it's my practice to – procedure, whatever you want to call it, to – usually, if the subject line of the e-mail contains enough information for me to provide a support technical answer, then I won't go any further into the e-mail because I don't have time to.

And probably, a good half of the e-mails I

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receive I can respond to based on the subject line.

So in this case, it says, "I can't watch long movies on Grokster." That tells me immediately he's got some kind of an issue with Windows Media Player. So I just automatically hit the give him the Windows Media Player response, which is what this block of text is down below.

MR. KENDALL: Q. Did you – do you remember when you got this e-mail if you took the term "long movies" and tried to see what the writer was referring to?

A. No.

Q. Can we mark as Exhibit 61 a one-page e-mail dated March 18th, 2002, between support@grokster and WBoyce.

(Whereupon, Plaintiffs' Exhibit 61 was marked for identification.)

THE WITNESS: Okay.

MR. KENDALL: Q. Do you remember when you responded to this e-mail whether you examined the text of the e-mail you were responding to?

A. I don't recall.

Q. In March of 2002, were you aware that Lord of the Rings was a recently released and copyrighted motion picture?

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A. Yes.

Q. I'd like to mark as Exhibit 62 a one-page forum posting dated January 19th, 2002, entitled "Playing Video."

(Whereupon, Plaintiffs' Exhibit 62 was marked for identification.)

THE WITNESS: Okay.

MR. KENDALL: Q. Were you aware, Mr. Rung, in January of 2002 that Columbia Pictures had just released a movie entitled "Black Hawk Down"?

A. Yeah. It's sounds familiar.

Q. And do you remember seeing on the forum this posting regarding somebody who downloaded Black Hawk Down could get sound but no video?

A. I don't recall anything about this.

Q. And is RipperRoo a name that is familiar to you? There is a responding post by RiperRoo, describing what might be a solution for getting the video.

A. I'm sorry. What's your question?

Q. My question is: Do you know who RipperRoo is?

A. No, I do not.

Q. I'm going to ask that Exhibit 63 be marked. This is a one-page forum posting concerning Planet of the Apes dated July 28th, 2001.

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(Whereupon, Plaintiffs' Exhibit 63 was marked

for identification.)
MR. KENDALL: I'm going to mark two others now. I'm going to mark as Exhibit 64 a one-page e-mail dated March 18th, 2002, from support to Lynnette Marie Ann Long. And I'll mark as 65 a one-page e-mail dated February 14th, 2002, from Grokster support to Lynn Ball – I'm sorry – Lynn Batt, B-a-t-t.
(Whereupon, Plaintiffs' Exhibits 64 and 65 were marked for identification.)
MR. KENDALL: Q. Mr. Rung, looking at Exhibit 63, can you interpret what these posts mean, or – excuse me – what do they mean to you as you look at them?
MR. PAGE: Objection. Assumes facts.
THE WITNESS: Yeah. I'm really not sure what they're trying to say here.
MR. KENDALL: Q. The original message says, "Planet of the Apes *NEW (2001)," and then it says, "Not! Deleting this one from our system, it appears to be Pearl Harbor." Do you know what that means?
A. Just the second part, that it appears that this guy is claiming that some file that was named Planet of the Apes is actually some file called Pearl Harbor, but deleting from their system, I don't know

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what they're talking about.
Q. Were you aware that in 2001, Planet of the Apes was released as a motion picture?
A. Sure, yeah.
Q. As was Pearl Harbor in 2001?
A. Yes.
Q. Would you look at Exhibit 64, please.
A. Okay.

Q. You responded to this e-mail, did you not, on March the 18th, 2002, to Lynnette Marie Ann Long?
A. Yes.
Q. And did you do any investigation as to whether any of the music referenced here, Neil Sedaka, Christina Aguilara, Beach Boys, was copyrighted?
A. No. I don't believe I even read this e-mail. I worked off the subject line. I could tell what the problem was, and I sent them a response.
Q. Okay. How about with respect to Exhibit 65?
Lynn Batt e-mails Grokster support saying, "I get four files found for Big Fat Liar but only two in the search field."
Did you do any research to determine whether Big Fat Liar was indeed copyrighted?
A. No. In this case, I probably at least skimmed it, determined that she had a problem with some of the

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controls in Grokster, and just sent her the stock control answer.
Q. Do you remember whether you read the words "Big Fat Liar"?
A. No. I do not remember that.
Q. I'm going to mark as Exhibit 66 a one-page e-mail from Grokster support to Ice Goddess dated March 2nd, 2002.
(Whereupon, Plaintiffs' Exhibit 66 was marked for identification.)
MR. KENDALL: I'll mark as Exhibit 67 a one-page e-mail from Grokster support to Cyberowl2003 dated March 9th, 2002.
(Whereupon, Plaintiffs' Exhibit 67 was marked for identification.)

MR. KENDALL: And I'll mark as Exhibit 68 a one-page e-mail from Marian Cristina to support@grokster.com dated 7 February 2002.

(Whereupon, Plaintiffs' Exhibit 68 was marked for identification.)

MR. KENDALL: Q. Mr. Rung, looking at Exhibit 66, you responded to this e-mail, did you not, on March 2nd, 2002?

A. Yes.

Q. Do you remember – do you remember reading the

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e-mail to discover that the person was complaining about downloading a file that was titled "The World's Greatest By R. Kelly," but finding out that it contained a virus?

A. I don't believe I did, because, again, in the subject line, I could tell what the problem was, and they got the stock answer for that type of problem.

Q. In Exhibit 67, Cyberowl write Grokster support, asking whether it's possible "to save a DivX full-length movie file on a CDR for a backup in case my P2C goes down. I tried it on another file-share network, and I couldn't save a recent movie, The Wedding Planner and Meet the Parents." You respond, "There are many tools available to burn CDs with."

Do you remember seeing in this e-mail the reference to The Wedding Planner and Meet the Parents?

A. No.

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Does Grokster currently operate a registration server?

A. No, it does not.

Q. And it stopped doing so when, sir?

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A. When -- which upgrade was that?

Approximately five or six months ago.

Q. And if you know, whose idea was it for that to take place?

A. I don't know whose idea it was.

Q. Was it somebody at Grokster?

A. No, it was not.

Q. When did you first learn that the FastTrack software that Grokster was running would no longer have a registration server component?

A. We observed that KaZaA received an upgrade, and then we read some comments about it that seemed to indicate that that was how it now operated.

Q. And is it true that in a subsequent upgrade of the Grokster client application, that application no longer sought to log into a registration server?

A. Correct.

Q. And you may have been asked this before, but do you know what that application attempts to do?

How does it log into the Grokster network or the FastTrack network?

MR. PAGE: I'm sorry. Let me object as vague and ambiguous and assuming facts. Could I get it read back to make sure that I heard it the way I heard it?

MR. BORKOWSKI: Q. Well, let me just ask

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another question, which is that the current Grokster client application, how does it connect to FastTrack?

MR. PAGE: Objection. Assumes facts.

THE WITNESS: Should I answer?
MR. PAGE: Yeah
THE WITNESS: All right. Thank you. It doesn't really connect to FastTrack. I think that's a mistaken impression I'm hearing. All of these programs are on everybody's computers. This is my understanding anyway, but they're all on everybody's computers.
And when you fire up Grokster or you fire up KaZaA, it goes and seeks a supernode, which is somebody else's computers. You know, it could be yours if you're running a copy of KaZaA or Grokster. And then they all hook together that way through these supernodes. I'm not sure I'm being responsive, but --
MR. BORKOWSKI: Q. And prior to that time however, your understanding was that the Grokster software first would connect to a registration server?
A. Correct.

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Q. At the time in which Grokster was – you didn't like the term "distributing." I'm trying to find a better one because I don't want to argue with you about it, but the upgrade software – we're talking about Gift right now, that software.
At the time that you had that on your download server, were you also running a registration server?
A. I believe that that upgrade was while we still had a registration server.
Q. And did the registration server play any role in the upgrade process?
A. Oh, I see. Yes, I believe it did.
Q. What role did it play?
A. It would – when you logged back in, it

would – one of the things the registration server has

Page 238

in it is a – it remembers the – as I understand again, it remembers the version that you're on, and then it will – or it will check the version you're on.
I don't know which. But anyway, it will say, "Well, obviously, you have an older version. Come get the newer version," and it will offer it to you.
Q. Just staying with this upgrade right now, did the user – was the user able to – well, let me strike that.
Was there a pop-up box, for example, that came up at that point that said, "Do you want this upgrade? Yes, or no?" Did that happen? Do you know?
A. Yes. I believe that's what happened.
Q. And that was when they logged into the registration server?
A. I believe so.
Q. And if they pressed yes, would the download just commence immediately?
A. Yes.
Q. What happened if they pressed no?
A. I believe on that particular upgrade they weren't given the option.
Q. So when they plugged into the registration server, the new upgrade just downloaded into their computer?

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A. I believe it notified them, but yes. In other words, I believe they still got a pop-up box that said you've got to get this, yada, yada, yada, and click yes

now. They may have had the option to say no, but then their – you know, their software wouldn't work after that, so –

Q. The software wouldn't work – well, I have another question before that.

Once the download began, was the user able to stop it, to your knowledge?

MR. PAGE: Calls for speculation.

THE WITNESS: In midstream? I don't know.

MR. BORKOWSKI: Q. If you know.

A. Yeah. I don't know.

Q. Also, once this upgrade got out, users who were running a previous version, is it accurate to say that they were no longer able to connect to the FastTrack network?

A. I believe that that was the case.

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Excerpt of Deposition of
Matthew Rung
June 20, 2002

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Q. What was your understanding as to the service that Napster was providing when it was providing a service?

A. They were providing -- to my understanding, they were providing servers which housed lists of files of users connected to their service which then those users can search through and download those files.

Q. Did you have an understanding as to what those files consisted of?

A. Somewhat.

Q. What was your understanding?

A. That is was mainly music files, MP3 files.

Q. At the time that Swaptor was maintaining an OpenNap server, did you have any understanding of what relation, if any, there was between OpenNap software and Napster software?

A. I would say yes.

Q. What was your understanding?

A. The OpenNap software was based on the Napster protocols which enabled a Napster client or Napster look-alike to connect to it.

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Q. If I could direct your attention to the next page GR 10918, which says, "Exhibit 2" on the top. It is titled, "Examples of Planned New Features for Software." The first bullet point is "Ignore List and Adult Filter." Do you see that?

A. Yes
Q. All right. Do you have an understanding what the ignore list is?
A. No.
Q. Do you understand what the adult filter is?
A. Yes
Q. What is that?
A. That would -- to the best of my knowledge, that would block out files with specific key words inside their name.
Q. And when you say, "Name," do you mean the title of the file or the Meta Data or both?
A. I believe it is whatever the user is searching for at that time, which could be the Meta

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Data. It could be the file name.
Q. Does that Grokster application currently have an adult filter option?
A. I believe so.
Q. Is it mandatory or is it an option, to your knowledge?
A. It is option.
Q. And did it always have that option, to your knowledge?
A. I don't believe so.
Q. Do your recall -- did -- strike that.
Did Grokster ask for that filter to be put in or not?
A. I don't know.
Q. Do you know where the list of blocked terms comes from?
A. Yes.
Q. Where?

A. The user inputs them themselves.
Q. All right. Could you explain that to me?
A. The adult filter, you can -- basically it's meant to be configurable. A user can turn on and put in whatever words they wish to filter out.

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MR. BORKOWSKI: Yes.
THE WITNESS: No.
MR. BORKOWSKI: Q. Did you take any action with respect to the Grokster application or the FastTrack network after you received those letters?
MR. PAGE: Objection. Vague and ambiguous. Any action at any time after he saw those letters?
THE WITNESS: We took some action.
MR. BORKOWSKI: Q. What did you do?
A. Based on not letters, but e-mails we received from the organizations, we did something on the database. We extracted the information from who was – what user name was actually – not what user name. I can't remember exactly, but we extracted some information out of the database we had regarding the complaints that were e-mailed to us and this, of course, was processed automatically.
Q. Well, what database are you referring to?
A. The old login database or user database.
Q. What kind of information did that database contain?
A. From what I remember, a user name, an e-mail address. I'm not sure about what else.
Q. And after you extracted information from that database, what did you do?

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A. Again, this is automated. We took that information, it was in the database. We forwarded an e-mail to the user's address, e-mail address, as we had it, giving them the complaint we received, telling them to stop sharing that file, I believe, and we also forwarded all this to whatever organization sent us the e-mail in the first place.
Q. And did you ever – in response to that, did you ever receive any communications from Grokster users?
A. I never did, no.
Q. Do you know whether Grokster itself did?
A. I'm not sure.
Q. And for – why did you send these e-mails to Grokster users that you just described?
MR. PAGE: I object and caution you not to disclose the content of any attorney/client communication in your answer.
MR. BORKOWSKI: But if you are not disclosing something on the basis of that, I would like to know that you are not doing that.
THE WITNESS: Could you go over the question again?
MR. BORKOWSKI: Could you re read the question, please?

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(Record read by the reporter.)
THE WITNESS: I believe we got a policy for handling that, an installing policy.
MR. BORKOWSKI: Q. What is that policy?
A. The copyright policy, I believe. I'm not sure the whole – the specifics of it.

Q. Is that a written policy?
A. It is on the web page, I believe.
Q. And can you give me the gist of that policy now, as you sit here?
A. Short of what I have already told you about what we did to respond to those e-mails, if we received an additional complaint, we would remove the user's account from the database.
Q. And when you said, "remove the user's account from the database," how would that process be accomplished?
A. Actually, that is not quite accurate. I'm sorry.
Q. All right.
A. What we would do is lock them out by changing their password, put it that way.
Q. Can you explain that in a little more detail to me? There is a particular user, for example, that you wanted to do this to –

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A. Yes.
Q. -- whatever "this" is. What would you do?
A. After handling the complaint, of course, we would – if we received a second complaint about the same issue, the same user, we would go into the database and change their password to something unguessable, essentially.
Q. And what would the result of that be when the user tried to log back in?
A. He would not be able to log back into the database, the login server, I believe.
Q. Under the applications that you are running, though, if a user was not able to log into the login

server, the application still seeked to connect to the network; isn't that correct?
A. I'm not quite sure.
Q. Is it your testimony that you don't think that is correct?
A. I am not sure what the application is designed to do in the case that it cannot connect to the login server.
Q. Are you aware of any instance in which a Grokster application was unable to connect to the login server and then connected to the network in some other manner?

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A. Related to this exact problem where they got locked out?
Q. No, under any circumstances.
A. Under any circumstances, yes. I know of people who have been able to get on the network.
Q. If a user had his or her password changed in the manner you indicated and was unable to log on through the login server, could the user download a new version of the application and sign up as a new user with a new password?
A. Possibly.
Q. Is there any reason to believe that couldn't be done?
A. No.
Q. Even without downloading a new application, a user whose password was changed in this manner, could the user in the existing application just change his or her password again and access login server that way?
A. No.

• • • •

33782: MusicCity.com{F}

ItemID: 33782
To: T Bowles
CC:
bcc:
Subject: MusicCity.com(F)
Date: 7/19/2001 6:21:33 AM

Attachments:

i don't remember whether you are coming in this morning, but i just wanted to know what i should do about this. he basically says no CPC, but the last deal they did like this was pretty profitable, and they would serve it up. i don't know, read on and tell me what i should do.

----Original Message----
From: Dave Rochlin [mailto:drochlin@emacula.com]
Sent: Wednesday, July 18, 2001 11:43 PM
To: S Donnelly
Subject: Re: MusicCity.com

Shawn

Thanks for the note back…

Most pertinent example was an e-mail program we ran with (now defunct)

Riffage.com:

500K emails, 1% sign up rate, 50% payup.

This equated to 2500 new subs for us, which, at $5/sub was worth $12,500 (a $25 CPM equivalent).

We aren't aggressively looking for traffic (just magazine subscribers), so a CPC deal wouldn't make sense for us. As I mentioned, we'd be happy to try a test (with a couple hundred thousand impressions) so you can see if you'd get an adequate return…

I'll try and call you tomorrow afternoon.

Regards,

Dave Rochlin

We would serve up

----Original Message----
From: "S Donnelly" <Sdonnelly@MusicCity.com
To: drochlin@emacula.com
Sent: Wednesday, July 18, 2001 12:50 PM
Subject: MusicCity.com

Dear Mr. Rochlin:

I would be interested to hear some specific results you've received from other sites like MusicCity.com. If you could include maybe some other revenue sharing examples you've done in the past, it would help us get a better idea of exactly what we were talking about. In addition, would you be serving up the ads or would we? If we were to serve them up, we have to consider the incurred costs. We typically don't work with CPA campaigns, but are interested in finding some way to work together.

I am eager to discuss a CPC deal with Vibe or Spin, though. The way we ensure significant click throughs is by content/advertising that is relevant to our user base. Now the reason why you'll find this offer so attractive is the incredibly positive feedback we've been receiving from our

advertisers' results. At the conclusion of the last contract we had with a digital media company, the director of marketing couldn't believe the click through rates they were getting. In addition, Morpheus has such a high media content with almost every user interested in music in many capacities.

If someone were to download a Pearl Jam song, and then see a banner ad featuring Spin's cover story on Pearl Jam, the probability of them clicking on that ad are through the roof. We are also in preliminary talks with a few other magazines in your industry, which is why we could also extend the option of making you the sole music magazine advertiser. If a music magazine and website such as Spin were to advertise, that could drive virtually all music related traffic to them. Now that should be a very attractive prospect.

I am confident we can work something out and I look forward to your call. Thanks for your response and your time, David.

Shawn R Donnelly
----------www.MusicCity.com----------
Senior Sales Executive
MusicCity.com
sdonnelly@musiccity.com
p: 615.261.0235 ext. 309
f: 615.261.0238

35858: Media Kit{F}

ItemID: 35858

From: T Bowles
To: 'abrookehall@hotmail.com'
CC: M. Moreland; Jason Griffin; sgriggin@musiccity.com
BCC:
Subject: Media Kit{F}
Date: 8/6/2001 7:41:24 AM

Attachments:
MediaKit.doc

Brooke,

Here is the full length media kit that I was speaking about yesterday. This along with a proposal that I will send in the next email need to be sent out when anyone asks for more information on Morpheus/MusicCity.com. Please contact me if you have any questions.

Trey Bowles
MusicCity.com

V.P. of Sales and Marketing
phone: 615.261.0235 ext. 300
fax: 615.261.0238
tbowles@musiccity.com
www.musiccity.com

----Original Message----
From: S. Donnelly
Sent: Monday, August 06, 2001 9:31 AM
To: T. Bowles
Subject: Media Kit

Shawn R. Donnelly
www.MusicCity.com

Senior Sales Executive
MusicCity.com
sdonnelly@musiccity.com
p: 615.261.0235x309
f: 615.261.0238

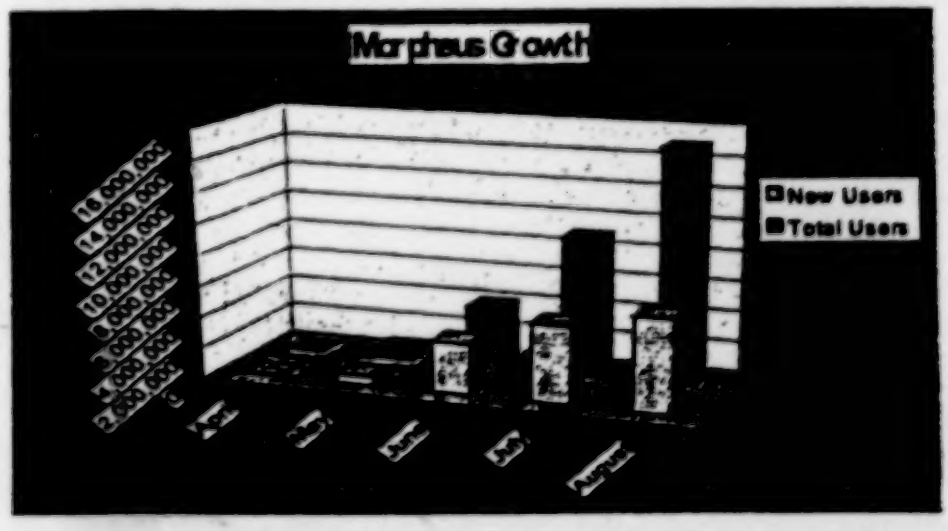
MusicCity.com

Advertise on MusicCity.com / Morpheus™

Benefits *Press* *Opportunities* *Demographics* *Contacts*

Benefits

MusicCity.com has the most sophisticated and advanced Peer2Peer application ever developed. You might have seen articles about us in Fortune Magazine, The Wall Street Journal, and USA Today. We have a revolutionary new technology called Morpheus. Morpheus is a proprietary, patent pending technology that pushes past "the edge" to consumers, enabling users to directly communicate, share information, files, and stay connected globally. MusicCity Networks Inc.'s technology works without a centralized server, enabling users to communicate with one another in a Peer2Peer manner.



What we have created with Morpheus at MusicCity.com is a community. This community allows for users to communicate, transfer information, and enjoy many of the benefits of having their own worldwide presence without the cost, hassle, and time it would otherwise take.

MusicCity.com is facilitating the future of the online community. By giving our users the ability to share files in all sorts of formats of audio, video, images, and documents, we are offering a medium for friends, families, and loved ones to dissolve the inconvenience of geographical dissimilarity. Whether it be sharing pictures from the family reunion or passing along your granddaughter's first piano recital, we are providing a gateway for our users, that truly offers positive opportunity to "share their lives online." We are currently seeking out companies and organizations offering products and services relevant to our target demographics.

Press

In the four months that Morpheus has been up and running, we have appeared in numerous magazine and newspaper articles. Although widely covered by the local newspaper, The Tennessean, interviews of CEO Michael Weiss and Chairman Steve Griffin have been conducted by Newsweek, Time, The USA Today, Wall Street Journal, New York Times, Fortune Magazine, The San Francisco Chronicle, and Toronto Star. As free music services are shut down left and right in a barrage of lawsuits and pressure from the Recording Industry Association of America (RIAA), Morpheus' completely decentralized online community grows at an incredible rate. CEO Michael Weiss disputes the characterization of MusicCity.com as the latest free music site, "Napster came on the scene for one purpose, to trade music. We think there's much more to it than that," and there is. We offer a tool that will revolutionize the way in which people use the Internet today.

In the beginning of June 2001, just 2 months after its inception, Internet goers had already downloaded over 1 million copies of our Peer2Peer application. There were approximately 250,000 simultaneous users each day, with word spreading from friend to friend, colleague to colleague, and relative to relative. Currently, Morpheus downloads from a multitude of sites exceed 9 million, with over 1.5 million in a single week. This number does not even include the millions more distributed by users. Its simultaneous users have grown to an astounding 650,000 and continue to increase exponentially. Perhaps the most incredible statistic about Morpheus users describes the average time they remain connected. 5.6 hours. People are addicted to its breadth of capabilities, chatting, sharing, discussing, searching, playing, and functionality offered through this technology

TIME

"Morpheus: The Better Napster"	Wed 7.25.01	Chris Taylor

USA TODAY

"As Napster shuts, others carry the tune"	Thr 7.12.01	Jefferson Graham

37335 Peer-to-Peer Info(F)

ItemID: 37335

From: Trey Bowles
To: Patrick Barry
CC:
BCC:
Subject: Peer-to-Peer Info(F)
Date: 10 3 2001 6:03:48 AM

Attachments:
image001.jpg
image002.jpg
image003.gif
image004.jpg
image005.jpg
image006.jpg
image007.gif
image008.gif

Patrick.

It is very difficult even dangerous for us to be able to target to this level. If we have too much information on our users then we can be accused of having a Napster like relationship with them where we know what they are doing and specifically what they are listening to, that is when we are in jeopardy of legal pursuit.

As of right now, we do not collect any information about our users. This is not our choice, but we are limited with the Fast Track technology from the Netherlands. In Morpheus 2.0 we will begin collecting demographic data that will allow

us to target by email, gender, age (I think), zip code and or address, and a couple of other fields. I as much as anyone am anxious to get to the place where we do actually have some effective means for targeting and segmenting our audience.

All that we have right now is the Jupiter Media Metrix information that I sent to you a few view months ago and the knowledge of the increasing downloads and unique users that we have on our site. I want t be of help in any way and I can assure you that we have a majority of our users who fall within the demographic range that you have listed below, but as for actual statistics we are a little thin right now.

Please let me know how I can help. Oh yeah, I really liked the Lensquest brilliant banner.

Trey Bowles
----------MusicCity.com----------
Director of Sales and Marketing
office: 615.261.0235 x 305 fax: 615.261.0238
cell: 615.969.1757
email: tbowles@musiccity.com
----------www.musiccity.com----------
----Original Message----
From: Patrick Barry [mailto: pbarry@bde3d.com]
Sent: Tuesday, October 02, 2001 6:58 PM
To: tbowles@musiccity.com

Subject: FW: Peer-to-Peer Info

Trey: Below are bands that are on the hit list for an upcoming video game in December. Of these, 9 or so will be on the game's soundtrack. Given the genre (punk, surf, skate, hip hop...basically the young, edgy, male 16-24 demo...think of the kids who skate, wear Vans, Skechers, baggy pants, go to raves, etc.), is it possible to target the

music users at Morpheus that frequent such music acts within your network?

Papa Roach
Anthrax & Chuck D
Rage Against the Machine
Naughty By Nature
Bad Religion
Powerman 5000
Millencolin
The High & Mighty Featuring Mos Def & Mad Skillz
Dub Pistols
Lagwagon
Styles of Beyond
Consumed
Fu Manchu
Alley Life Featuring Black Planet
Swingin' Utters
Alien Ant Farm
Adolescents
AFI
Bodyjar
CKY
Del the Funky Homosapien
Guttermouth
House of Pain
KRS One
Mad Capsule Markets
Motorhead
The Nextmen
Ozomatli
The Ramones
Red Hot Chili Peppers
Redman
Reverand Horton Heat

Rollins Band
Xzibit
Zebrahead
----Original Message----
From: Patrick Barry [mailto:pbarry@bde3d.com]
Sent: Tuesday, October 02, 2001 3:52 PM
To; Lori White
Subject: Peer-to-Peer Info

"Morpheus Sets Itself Apart From Napster"
Thr 8.02.01
Stefanie Olsen,
Gwendolyn Mariano

"Morpheus: The Better Napster"
Wed 7.25.01
Chris Taylor

"As Napster shuts, others carry the tune"
Thr 7/12/01
Jefferson Graham

"File-sharing software likened to Napster: Franklin Company adopts technology"
Thr 7/12/01
Staff

"A possible successor to Napster"
Wed 7/11/01
Benny Evangelista

"Morpheus Out of the Underworld"
Mon 7.02.01
Kelly Truelove, Andrew Chasin

"Napster user falls in the arms of Morpheus"
Mon 7.16.01
Tyler Hamilton

"Record Labels Prepare Their Online Assault"
Mon 7.23.01
Jon Healey
----Original Message----
From: Patrick Barry
Sent: Tuesday, October 02, 2001 3:49 PM
To: 'lwhite@ignitedminds.com'
Subject: FW: Activision Creative
FYI....
----Original Message----
From: Patrick Barry
Sent: Friday, September 28, 2001 9:28 AM
To: 'lestrada@ignitedminds.com'
Subject: Activision Creative

Hi Lydia: Thanks for your time yesterday on the phone. As discussed, here is some creative....note that we turned it quickly, and without the benefit of Activision of IM guidance or input. The tif files should give you an idea of where the ads would go in the Morpheus and Kazaa netwworks. Thanks.

Patrick Barry
Brilliant Digital
818.615.1507

PRIVALLEGED & CONFIDENTIAL
ATTORNEY/CLIENT COMMUNICATION

Key Fundamentals of the StreamCast Networks Business
(As you will see we are deploying both a network built on a unique software-driven technology platform as well as a software-driven user interface).

Business –

StreamCast Networks is creating a network infrastructure that efficiently utilizes bandwidth across the Internet that allows content, application and service providers to rapidly and inexpensively acquire audiences or users for their works, products or services and to distribute them quickly and more economically. By deploying DRM software from 3rd party vendors, providers can charge for and protect their intellectual property at prices and security levels suited to their individual business objectives. Additionally, the company is creating a user-friendly interface that integrates local file and system management with Internet based services from multiple P2P providers. This interface serves as a single point of entry to manage hierarchy conflicts amongst multiple applications, such as unifying all instant messaging platforms and enabling file attachments.

MusicCity Networks, a subsidiary of StreamCast Networks, is deploying the StreamCast Technology Platform to allow people to search for all types of media through the network. It also allows users to communicate with one another via chat rooms, message boards and file sharing; to purchase merchandise related to their lifestyle (i.e. MP3 players, home networking kits), and to read about

"What's New" in digital media. We are looking to develop a "pseudo-streaming quasi-personalized" radio (internally dubbed "Ramster") station that will allow users to listen to music based upon their personal preferences and delivered to them in accordance with the performance compliment as stated under DMCA. This is 6-8 weeks away and will be delivered across the StreamCast Technology Platform to MusicCity users.

Revenues/Profits –

Over the next 5 years we are projecting a combined income from both StreamCast Networks and MusicCity Network of $522,000 (2001) growing to over $600 million (2005). Here is how we plan on getting there:

- **Near Term (Q2, 2001)**

1. Rich media ads appearing within User Interface
2. Audio ads inserted 2 minutes per hour
3. Transactional fees for e-trading and e-commerce of targeted merchandise & goods.
4. Banner advertising appearing within the MusicCity website.

- Mid Term (Q3 - Q4. 2001)

1. Application Server Software Licenses that provides network level access under license or service models to software companies, content, application and service providers.
   - This would include the ability for recording companies or individual artists to promote their music to users on the network, similar to free airplay on the radio, and to sell their music to

listeners for downloading of a permanent CD quality copy of the song.

2. Custom Application Solutions at the enterprise level to operate virtual private P-2-P networks to enhance collaboration efforts within organizations.
3. Revenues derived from OEM of the User Interface (i.e. ISP's).
4. Up-sell of Enhanced Interface software to consumers.
5. Peer Search Fees - advertising or marketing messages that appears in conjunction with search request by the user.

- **Long Term (2002+)**

1. Software development kits sold to 3rd party developers and resellers enabling additional custom application development to tie into the network.
2. "Leasing" of extra capacity of distributed computers within the network to 3rd party companies for computer intensive research efforts (i.e. pharmaceutical companies, university medical research, government-sponsored research projects).

Technology Advantages

Network:

1. No bottlenecks, improved performance and quicker searches because neither search requests, directory listings nor actual downloads pass through any central server.
2. Technology platform can scale to over 1 million simultaneous users.

3. The Network is automatically self-organizing -- any outages at the company will have no effect on the Network.
4. Communications between users are fully encrypted to protect privacy, data transmissions and unauthorized intrusions.
5. SmartStream Transfer Protocol (SSTP) automatically resumes broken content streams by finding another source for the same content within the network. If an alternative source cannot be found immediately, it will monitor the network until the requested content stream becomes available.
6. FastStream Aggregation Transfer (FSAT) increases speed of downloads of large files through the simultaneous transfer of content from multiple sources to the user.

Interface (version 1.0):

1. A full-featured P2P File Sharing Application that will allow users to search for all types of digital medial including audio, video, photos, images, documents, research reports, home-made movies and more.
2. A powerful search engine where you can search on 'meta data', such as media type, category and artist name, product name, file name, etc. Search results are grouped together, so the same file will only be displayed once.
3. Imbedded Microsoft media player functionality for audio and video playback.
4. Instant messaging within the network. Subsequent versions will have universal messaging across all IM platforms.

5. Chat and message boards allowing users to share their ideas and their inner most personal thoughts with one another.
6. Playlist creation and media management tools allowing users to easily organize their media file collection. Subsequent versions allow for user-generated DMCA-compliant radio stations.
7. Automatic network and CPU throttling to keep user's computer utilization under 10%.
8. Direct link to MusicCity web-servers for daily updates and "What's New" from content providers.
9. Direct link to Fresh Gear, an electronic playground of the latest MP3 players, audio and networking "toys for girls & boys" to purchase at deep discounts.
10. Tell a friend feature.
11. Banner Ad and Rich media Ad support.

P2P Technology - The fundamental building block of the Internet is P2P, that's how the government designed it over the last 30 years. The core design of the Internet was to keep communication between peers working even if the main communication grid of the country was gone (act of war, etc.). Napster did not create P2P, they popularized it.

Technology Development

1. *Patents* - We have already begun the process for filing our first patent and will have the first patent (or provisional patent) filed by the end of April. The patent will cover usage of the P2P platform for streaming media. Another patent (which may be rolled into the first)

details the workings of our streaming user interface. Our product design for the interface dates back to October, 1999 within the company based upon work done years earlier by our CTO—who has been in the Internet space for nearly 20 years—well before the World Wide Web was ever created. This also pre-dates both the launch of the current MusicCity Network as well as our "discovery" of KaZaA.

2. *Home-Brown Technology vs KaZaA* - We first start with the product design and the features we desire. Then search to see if there is any existing technology based upon our product specs. We then determine our options and the cost effectiveness (in terms of dollars and time to market) to: a) build it from scratch in-house; b) contract a 3rd party to build it for us; c) license or purchase existing technology. In the case of KaZaA, we were fortunate to find a) technology that already existed, b) negotiate a very favorable deal to license that technology, c) meet a group of talented individuals that shared similar technological visions, d) negotiate an exclusive period in which to purchase the company that would then provide us with up to two additional patents to file, as well as giving us an "instant" global presence which is not only attractive to investors but strategically important to the company, e) turn a potential competitor into a partner (or subsidiary, as is our current plan) and f) block any other competitors from doing all of the above. Most software companies operate similarly. After

all, didn't Bill Gates start Microsoft with technology he licensed from IBM as well as purchasing a lot of other technology from others? Macromedia's Flash technology was not home grown, but acquired. Apple didn't create the MAC interface, they bought it from Xerox. We have already made enhancements to KaZaA's existing technology. We expected this to happen, which is why we were insistent on including an exclusive period to negotiate for the purchase of the company. This was the best way that we could capitalize on the added value we were bringing to KaZaA. By taking this route we increased by 6 months our time to market and at a considerable savings from developing from scratch. Also, we are in discussions with two companies on licensing their technology to create the DMCA compliant radio (Ramster") stations using their engines to create these "on the fly." We may use them, we may create internally or we may have KaZaA or another 3rd party develop this for us. This is simply how we can get a big bang for a little buck.

3. *Engineering Staff* - Our total staff size consists of 8 people plus two consulting technical groups (MeltMedia & KaZaA). 4 of the 8 are on the technical end, 5 if you consider our graphics director who is involved in the user interface and website creation. We are grossly understaffed in all areas-by design. When I joined the company last April 2000,l the company had double the staff -- primarily in the technical side. They had worked for over

a year, at a monthly burn-rate of $120,000 to $150,000. They went through $3 million in venture capital and never produced a single marketable product or service. The first thing I did was slash the burn rate and head count by at least 50%. Until we had a product/service in the marketplace I was going to run the leanest company you could imagine so we did not go down in flames like so many other dot-coms.

You do not need a large engineering staff to achieve big results. In 1996-7,m our CTO led a small development team of 4 people with less than $1.5 million and created one of the most astounding video software compression technologies that anyone had ever seen. Among other things, it was used to put full motion, full screen video on CD-ROMs working off a 486-66 computer with 8 megs of RAM. His technology, "Motion Pixels", surpassed what Intel created with 115 "top" engineers and $100 million for their "Indeo" development. And he did it the same way that he is doing it here, searched for a core technology already created, bought the technology, added the developer to his team and then improved it to the specs that he designed. Apple wanted to license the technology as the core to their QuickTime Video, Microsoft tried to purchase it, too. This technology was so good that I was able to license top movies for release on CD-ROM from studios such as New Line Cinema with deals ready to roll from Disney (after putting the technology through the most vigorous

tests), Paramount and Universal. Newsweek magazine called the technology "VHS quality" and other major media raved about it, too. The technology was also used by NASA and the CIA. This was in 1996-1997 and predated the release of DVDs. The moral of the story: SIZE DOESN'T MATTER!

4. *Staff Size* - Grossly inadequate currently. We also rely on about a dozen volunteers today besides our core team of some of the most dedicated individuals that I have ever known. We are in the process of hiring a recruiter to help us identify key hires we need.

Market Advantage - In the P2P world, those with the most nodes win. One user = one node. 10 million users = 10 million nodes. In the coming consolidation of P2P companies, those with the most nodes will have the most leverage. Thanks to MusicCity, we are well on our way to dominate this area. Perhaps someone will cry "foul" claiming we built a business on the back of pirated music.

RIAA - We are not here to keep the music free—however, we strongly believe that consumers need choices. I believe that ultimately the market will decide the future of digital media distribution. It won't be us, it won't be the RIAA and I truly hope it won't be Congress. The RIAA is a trade group that represents the interests of its members. They do no licensing nor do they set policy. They speak as one voice for their members—however it is not THE voice of the music industry, just THE LOUDEST voice.

I could spend volumes on this subject, and on the subject of artists, but will not do so now -- other than to say the following, which is my personal belief and may not reflect that of the entire company: In history it has been proven time

and time again that old media will never accept new media. It upsets the status quo. They will do everything in their power to kill it. When they can't kill it, they will move heaven and earth (and maybe Congress) to try to control it. When they finally come to the realization that they can neither kill it nor control it, they will begin to listen to and respond to the market. At that point, everybody becomes a winner. Turning to Congress to protect the interests of a few over the interests of many is wrong (and I am not talking about free music). This is a position that I have believed in with my heart and soul for 23 years. This is a position that I have fought for publicly in the 1970's, the 1980's and the 1990's...well before there was ever the hint of a Napster. However, I will temper my personal beliefs, to the best of my ability.

126794: feedback

ItemID: 126794

From: Natalie
To: info@musiccity.com
CC:
BCC:
Subject: feedback
Date: 6/7/2001 7:46:45 PM

Attachments:

Hi there!

Just wanted to tell you how much I love your site. I used to use Napster all the time, and when they began battling in court I decided to look for a new place to look for all the music I love. I wanted to tell you that I have never had a problem finding any songs I want. I love the fact that it will resume my download for me. I hated it at Napster when my song would be almost done and then the download failed. It is also easy to search by category and even years, so its easy to find the latest tunes.

Great Job people, keep it up!

Natalie Stevenson

127155: continues play

ItemID: 127155

From: Inoprink@aol.com
To: info@musiccity.com
CC:
BCC:
Subject: continues play
Date: 6/9/2001 10:10:17 AM

Attachments

hello

only just started using ur site and we think its great, better than napster just don't get caught!

we wanted to know if we can have continues play of our collection of songs that we downloaded from your site. if so can u please tell us how.

thankyou

from john smith

136716: Content{F}

ItemID: 136716

From: Info@MusicCity.com
To: '013-312202'
CC:
BCC:
Subject: Content {F}
Date: 7/13/2001 7:29:21 AM

Attachments:

We do not control what users put on the site. (policy section). Maybe you should load some up

----Original Message----
From: 013-312202 [mailto: 013-312202@telia.com]
Sent: Thursday, July 12, 2001 10:27 AM
To: info@musiccity.com
Subject: Content

Yes, You have (much to few) Elvis videos.
Yes, You have a few Beatles videos.
Yes, You have some Jimi Hendrix videos.
No, no search response on "Muddy Waters".
No, no search response on "Buddy Guy".
No, no search response on "Kinks" or "the Kinks"
Just in case you run some kind of MTV service please tell me so I can act accordingly.

Regards
Christer Larsson

136945: no picture{F}

ItemID: 136945

From: Info@MusicCity.com
To: 'Tim & Tracey'
CC:
BCC:
Subject: no picture{F}
Date: 7/18/2001 6:53:45 AM

Attachments:

They have a bad file root or you need a plug-in

----Original Message----
From: Tim & Tracey [mailto: tsivers1@home.com]
Sent: Tuesday, July 17, 2001 6:40 PM
To: info@musiccity.com
Subject: no picture

Hello is there any way you could tell me why my downloaded movie files shrek for example.it won't play? just sound and no picture please help. Tim

136947: ABOUT VEDIO PICTURE{F}

ItemID: 136947

From: Info@MusicCity.com
To: 'SAAD'
CC:
BCC:
Subject: ABOUT VEDIO PICTURE{F}
Date: 7/18/2001 7:00:21 AM

Attachments:

Go to the discussion board and find the links for the plugins

----Original Message----
From: SAAD [mailto: touch_404@hotmail.com]
Sent: Wednesday, July 18, 2001 6:56 AM
To: info@musiccity.com
Subject: ABOUT VEDIO PICTURE

HI,
I HAVE LOADED THE 6TH DAY AND THE MUMMIES RETURN BUT THERE IS NO PICTURE COMING EXCEPT VOICE. PLS TELL ME WATS WRONG. I AM DESPRATELY WAITING FOR YOUR REPLY. MY E-MAIL NO. IS touch_404@hotmail.com,
THANKS.

137081: Player Error{F}

ItemID: 137081

From: Info@MusicCity.com
To: 'Michael Greenberg'
CC:
BCC:
Subject: Player Error{F}
Date: 7/18/2001 12:35:29 PM

Attachments:

Go into Windows Media Player then go to help then go check for player updates and get all the updates. That should fix the problem

----Original Message----
From: Michael Greenberg [mailto: greenberg@home.com]
Sent: Tuesday, July 17, 2001 7:47 PM
To: info@musiccity.com
Subject: Player Error

To Whom It May Concern:

Fisrt of all, I wanna say congratulations on such an amazing program. However, I have a small problem. When I download songs, music videos, and images I have no problem, however, when I download movies for example, The Matrix, Blair Witch, Tomb Raider and then it is fully downloaded it goes to My Media. When I click to play it the Theater opens up and a screen pops up with saying Player Error. Then I can't play the movie. What do I do???

Thanks so much,
Mike

137920: Difficulty viewing film

ItemID: 137920

From: Info@MusicCity.com
To: 'Brenda Laginess'
CC:
BCC:
Subject: Difficulty viewing film{F}
Date: 8/30/2001 2:36:28 PM

Attachments:

Try downloading the newest version of windows media player with all the plug-ins

----Original Message----
From: Brenda Laginess [mailto: laginess@mediaone.net]
Sent: Thursday, August 30, 2001 4:19 PM
To: info@musiccity.com
Subject: Difficulty viewing film

To Whom It May Concern,

I am having difficulty viewing a video file and can't resolve issues on my own.

I downloaded Shrek as a video file and am only hearing the audio portion. The first attempt was with the MEG file. clearly labeled 'film". Thinking I had a faulty download, I downloaded again from (smr), again, clearly labeled movie but in two parts this time. These files are coded mp43.

Please advise me as to what I can do to view these files properly. Thank you for your assistance in this matter.

Brenda Laginess Shamilar
laginess@mediaone.net

137925: please help me/movie help{F}

ItemID: 137925

From: Info@MusicCity.com
To: 'chong'
CC:
BCC:
Subject: please help me/movie help{F}
Date: 8/30/2001 2:55:11 PM

Attachments:

Well chong, try downloading the current media player and all the plug ins, that should help

----Original Message----
From: chong [mailto: sweet_kiwi@sympatico.ca]
Sent: Thursday, August 30, 2001 5:01 PM
To: info@musiccity.com
Subject: please help me/movie help

Dear music city,

i've downloaded the movie...'bring it on' 4 times and everytime i play it the sound of the movie appears but not the picture. What is happening and also the movie pearl harbour ... has been downloaded many times too but a window pops up and says 'player error'
please help me.

thank you,

confused

143398: How do I burn a copy onto a cd, or save on a floppy???{F}

ItemID: 143398

From: Info@MusicCity.com
To: 'Brian Saide'
CC:
BCC:
Subject: How do I burn a copy onto a cd, or save on a floppy???{F}
Date: 7/19/2001 7:20:22 AM

Attachments:

Brian

Just attach the file to an email. This should work fine. Hope this helps.

Info@MusicCity.com

----Original Message----
From: Brian Saide [mailto: bsaide@earthlink.net]
Sent: Thursday, July 19, 2001 2:35 AM
To: info@musiccity.com
Subject: How do I burn a copy onto a cd, or save on a floppy???

Dear Sir/Madam:

I just downloaded Morpheous to my pc. I downloaded the Tupac Shakur X-rated version of "How Do You Want It?" However, I'd like to copy it and give it to friend of mine, to watch. How can I do this from the Morpheous program? Is there a way to send it via email, or any other methods I do not seem to find in the site?

Please advise and assist.

Sincerely,

Brian S. Saide
Student Physician
Ross University School of Medicine
Entering Class Fall 2001

143427{F}

ItemID: 143427

From: Info@MusicCity.com
To: 'Robert Callahan'
CC:
BCC:
Subject: {F}
Date: 7/19/2001 11:49:03 AM

Attachments:

Robert,

- There are a couple of things you might try. First, make sure you have all the appropriate plug-ins to play movies. This is probably what is wrong. Go the discussion board and search the posts for help with this. I was on this morning, there were several posts helping with where to get the plug-ins as well as which ones you need.

Second, make sure you have the most recent updates for your media player. Just go to the help section on Windows Media Player, and get the updates. This probably isn't the reason for you're problem, but it couldn't hurt to try.

Hope this helps.

Info@MusicCity.com

----Original Message----
From: Robert Callahan [mailto: rcallahan@bak.rr.com]
Sent: Thursday, July 19, 2001 1:34 PM
To: info@musiccity.com
Subject:

I downloaded the movie "Moulin Rouge" and when I play it I get no picture. I have perfect sound. This is the first time I have tried a movie...am I doing something wrong or is it just possibly a poor download?

Robert

143771: Congratulations{F}

ItemID: 143771

From: M Moreland
To: 'Larry Romans'
CC:
BCC:
Subject: Congratulations{F}
Date: 8/8/2001 11:25:09 AM

Attachments:

---

larry,

thanks for the email. have you been using morpheus at all? I just downloaded a bunch of billie holiday songs…very nice.

how are things at the office? I trust you're holding everything together in my absence?

take care, and I'll see you soon.

adios,
michael

-----Original Message-----
From: Larry Romans [mailto:larry.romans@home.com]
Sent: Monday, July 30, 2001 8:45 AM
To: morelawrn
Subject: Congratulations

Michael,

I'd haved loved to be there for your big day. I wish you an Laurie many happy years together.

Larry

144169: video{F}

ItemID: 144169

From: Info@MusicCity.com
To: 'Wendell'
CC:
BCC:
Subject: video{F}
Date: 8/20/2001 7:37:38 AM

Attachments:

You might trying going to the discussion board to get some divx codes...

----Original Message----
From: Wendell [mailto: wendellis@home.com]
Sent: Sunday, August 19, 2001 12:48 PM
To: info@musiccity.com
Subject: video

Hi

i recently downloaded Matrix the movie on Morpheus

it plays the audio but I do not get any video Why? I have windows Media player and allot of other video players but when I go to the theater section of Morpheus i get a black screen.?

What am I doing wrong?

Wendell

148613: Morpheus screen shots{F}

ItemID: 148613

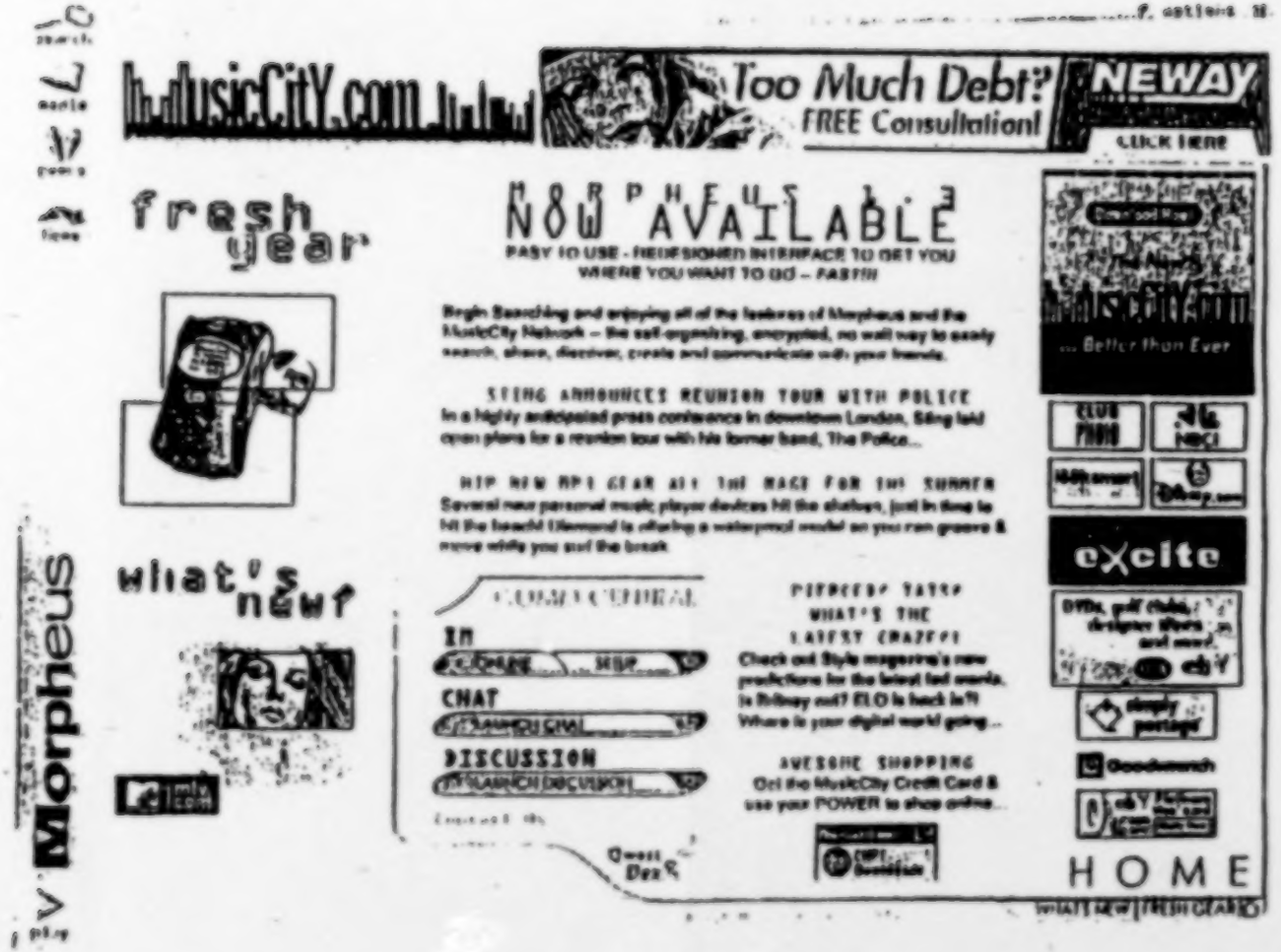
From: Darrell Smith
To: sgriffin@streamcast.ws
CC:
BCC:
Subject: Morpheus screen shots{F}
Date: 11/28/2001 6:20:59 PM

Attachments:
freshgear.jpg
HOME.JPG
OPTIONS.JPG
SEARCH.JPG
WHATSNEW.JPB

Ignore the MusicCity.com graphic it's just a place holder.

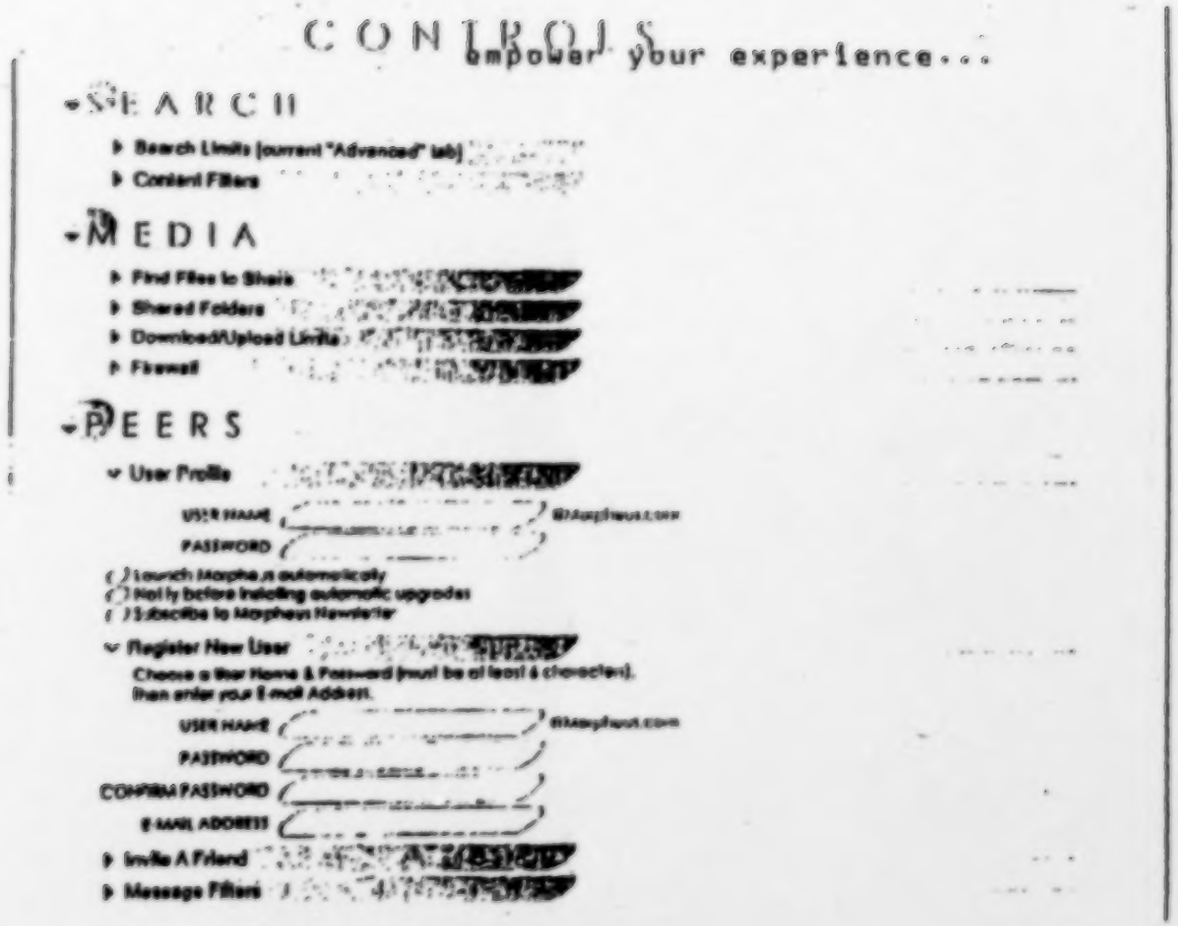
-Darrell

BEST AVAILABLE COPY



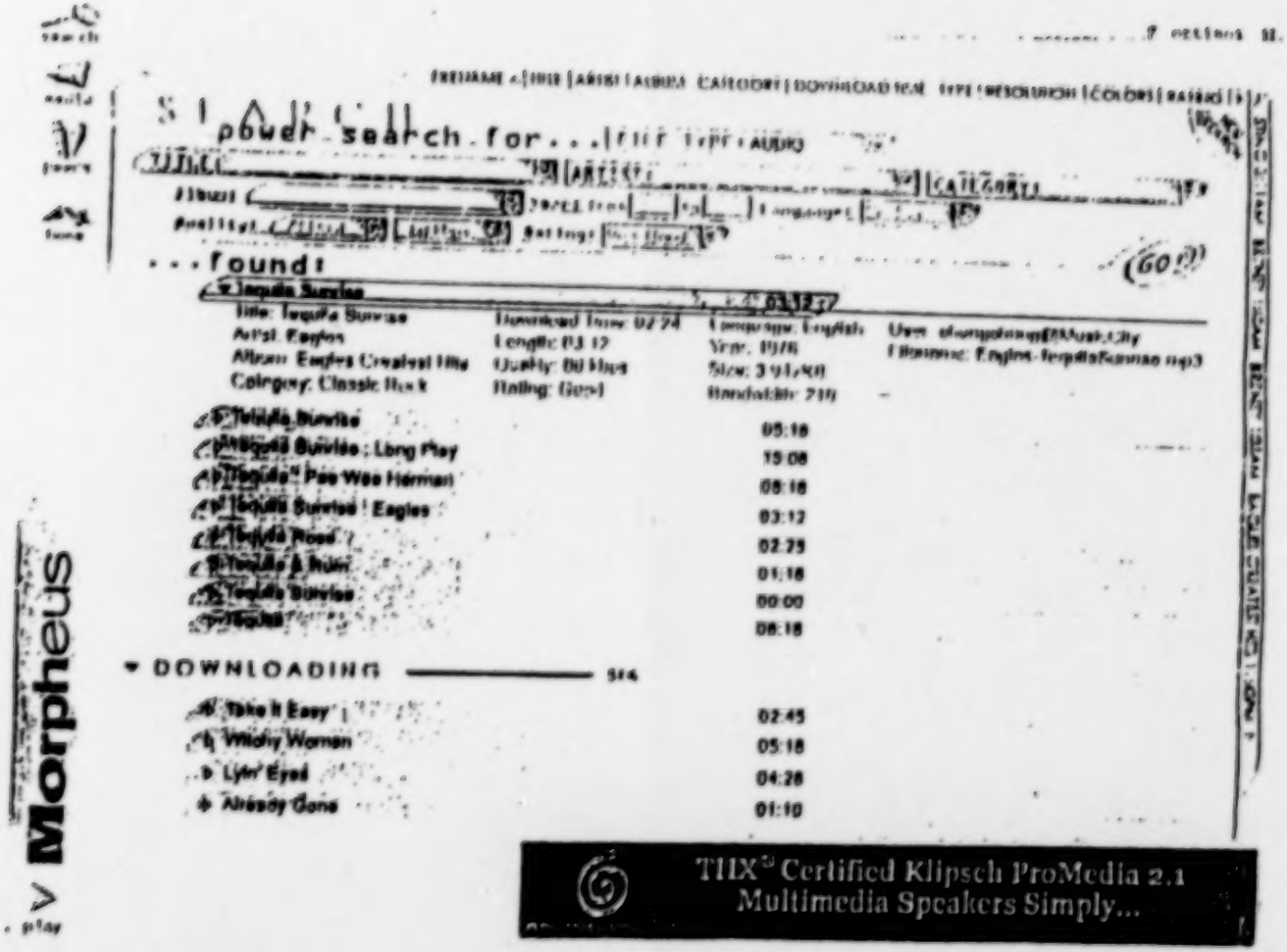
JER 3294

Exh. 11, Pg. 1022



JER 3295

Exh. 11, Pg. 1023


power search for...
...found!
Tequila Sunrise
Title: Tequila Sunrise
Artist: Eagles
Album: Eagles Greatest Hits
Category: Classic Rock
Length: 03:12
Quality: 80 kbps
Rating: Good
Year: 1976
Size: 3,917,439
Bandwidth: 210
Tequila Sunrise 05:18
Tequila Sunrise : Long Play 15:08
Tequila" Pee Wee Herman 08:18
Tequila Sunrise ! Eagles 03:12
Tequila Road ? 02:29
Tequila & Rum 01:18
Tequila Sunrise 00:00
Tequila 08:18
DOWNLOADING
Take It Easy 02:45
Witchy Woman 05:18
Lyin' Eyes 04:26
Already Gone 01:10
Morpheus
TIX® Certified Klipsch ProMedia 2.1
Multimedia Speakers Simply...

MusicCity.com

Imaging Is Money...

fresh gear

what's new?

PIERCED? TATS?
what's the LATEST CRAZE?!

Check out Style magazine's new predictions for the latest fad mania.
Is Britney out? ELO is back in?! Where is your digital world going so fast?!

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HOME

what's new | fresh gear

Morpheus

JER 3297

Exh. 11, Pg. 1025

150322: MusicCity Board Meeting{F}

ItemID: 150322

From: Steve Griffin
To: 'Bill Kallman'
CC:
BCC:
Subject: MusicCity Board Meeting {F}
Date: 4/5/2001 10:05:31 AM

Attachments:

Just got off the phone with Mike, as expected was very upset. Wants to know whats going on?

Has other things he feels we need to get done right now. He feels we need to get with Ball Janik to get the Imperial thing done, then he wants to get out a better explanation of what we do to Andrew Bridges. He is available later this afternoon.

Here is his response to the agenda, he wants to know if we can have the meeting later this afternoon. I told him, I was not available after 5pm my time today. Is there any other time you could talk this afternoon. Please call me and lets discuss the issues and his responses and concerns as outline below.

Mikes comments to the agenda

- Yes we want to get an additional $50K
- No, now is not the time to engage Brentwood. It is a waste of our time and money maybe later. We know what kind of organization we need to build not some guy who is going to talk to us for 45 minutes. Why should we pay someone that much money when we have very little cash.

- Yes we need to make sure we do not spend too much money with KVO. He agrees we should use them to polish not draft. He is unable to get a quote yet for the work.
- Do not need Jeff Smith, or Ken Keiler, in fact to engage them would cause us to slip as much as two weeks. There is no time to bring them up to speed. Darrell can create the things we need. He has total confidence in Darrell to prepare the "undergirding" we need. I finally got him to realize that he or I could not create new revenue streams, I can do the models but neither of us has the background to come with the revenue models for Streamcast. He thought maybe in a couple of weeks we could talk. I told him that we did not have time to wait and there would never be a good time for a data dump.
- Darrell will have patents filed by the end of the Month
- Mike does not need to move into an office. In three weeks he will be in his new house and will not have to share his office with his mother. He does not need an office until we have employees. It would be a total waste of money.
- We do not need a deal with Hiwire as much as we need someone to sell our rich media ads which we will have with our first release. A deal with hiwire will be easy to do but no revenue for 8 weeks.

Main point is that we need to be working on the marketing and PR plan for the migration to the new network. Doesn't anyone understand if we do not get the consumers migrated, we do not have a company. Our focus can be nothing else.

That pretty well sums up the telephone conservation. Lets discuss

Steve

----Original Message----
From: Bill Kallman [mailto: bill@timberlineve.com]
Sent: Thursday, April 05, 2001 11:37 AM
To: 'Steve Griffin'
Subject: RE: MusicCity Board Meeting

Any luck?

----Original Message----
From: Steve Griffin [mailto: steve@streamcast.ws
Sent: Thursday, April 05, 2001 9:13 AM
To: Michael Weiss; Bill Kallman (E-mail)
Subject: MusicCity Board Meeting

Mike, would it be possible to have a brief meeting at 9:30 your time to cover the issues listed below. Please let me know, we will use evoke.

Agenda

- Approve Documentation of request of Timberline to fund an additional $50,000
- Approve Engagement of Brentwood Associates for Leadership Needs and Organization assessment

- Brentwood has agreed to provide this assessment for $10,000. Half to be paid in stock and the rest in cash. This amount will be fully applied to any search that may result from the assessment.
- Discussion and documents and materials necessary to present company to investors and potential strategic partners

    - Approval to use KVO to "polish" the StreamCast Investment documents

- Dates for completion

- Monthly engagement of Jeff Smith and Ken Keiler to assist in business plan, revenue stream

- Update on filing of Patent(s)
- Approval for M Weiss to move into the Barrister Executive Suites (asap)
- Discussion on how to complete a business agreement with Hiwire that can be used to verify our ability to generate audio/rich media ad revenue
- Discussion regarding Imperial Bank with update from 4/05/01 discussio with Ball Janik
- Any other business to come before the board

167007: spamcop@indirect.c This test song skips as well?[
ItemID: 167007

From: Bill Kallman
To: Darrell Smith (E-mail)
cc:
bcc:
Subject: spamcop@indirect.com] This test song skips as well?[
Date: 5/14/2001 12:15:19 PM

Attachments:
Stevie Nicks - Everyday (Trouble in Shangri La).mp3
Blank Bkgrd.gif
Stevie Nicks - Everyday (Trouble in Shangri La).ID3

Bill Kallman
Timberline Venture Partners
203 SE Park Plaza Drive, Suite 205
Vancouver WA 98684
360.882.9577

Learn about Timberline@ <http://www.timberlinevc.com/>
www.timberlinevc.com
Our Portfolio Includes:
advanced predictive technology @
<http://www.appliedinference.com/>
www.appliedinference.com
enabling B2B online auctions @ <http://www.bidpath.com/>
www.bidpath.com

emerging sports portal @ <http://www.docutouch.com/>
www.docutouch.com
wireless e-mail services @ <http://www.etrieve.com/>
www.etrieve.com
multi-lingual ASP @ <http://www.glides.com/>
www.glides.com
collaborative commerce platform @
<http://www.knowledgelinks.com/>
www.knowledgelinks.com
all-optical switches @ www.luxcore.com
<http://www.luxcore.com/>
private equity portal @ www.nvst.com
<http://www.nvst.com/>
visual eCRM @ <http://www.oxelis.com/> www.oxelis.com
customer participation management @
<http://www.par3.com/> www.par3.com
sales and use tax service @ www.discovertaxbay.com
<http://www.discovertaxbay.com/>
streaming media @ <http://www.streamcastnetworks.com/>
www.streamcastnetworks.com
web to wireless @ <http://www.wiredpocket.com/>
www.wiredpocket.com
e-mail postal service @ <http://www.zairmail.com/>
www.zairmail.com
new economy news & data @
<http://www.zonecommunications.com/>
www.zonecommunications.com

This E-Mail transmission is intended only for the use of the person to which
it is addressed and may be Privileged, Confidential and Exempt from

167545: Mitchell Silberberg & Knupp, LLP {F}

ItemID: 167545

From: Derek Anderson
To: 'Darrell Smith'
CC:
BCC:
Subject: Mitchell Silberberg & Knupp, LLP{F}
Date: 3/7/2001 6:54:19 PM

Attachments

Done…their ip block is 207.243.213.

just banned it. I only see one c class.. so hopefully there using a proxy from one IP for all their users.. but the whole C class is banned.. ;)

----Original Message----
From: Darrell Smith [mailto:darrell@indirect.com]
Sent: Wednesday, March 07, 2001 1:12 PM
To: Derek Anderson
Subject: Mitchell Silberberg & Knupp, LLP

This is another for the ban list.

Darrell

http://www,msk.com/

169022: Look and feel

ItemID: 169022

From: Margaux Ayn Schaffer
To: darrell@indirect.com
CC:
BCC:
Subject: Look and feel
Date: 1/6/2001 12:35:03AM

Attachments:
eviltwin.pdf

Hi Darrell,

It took most of this afternoon and evening (plus three Red Bulls for inspiration) but I think I have something…

I need a concept AND a system that accomodates tiered content. The collumn layout is a good way to achieve hierarchy and segmentation, it is even possible to add another (but PLEASE don't tell Mike).

I wanted it to have a naughty, subversive feel that works on several levels, we even spoof Napster a bit and play on the attitudes we all have about sharing.

It is also in the web colorspace and will down-load fast.

BTW: I have an early morning appointment and I will not get back in until after 2:00

Talk to you saturday.

As always,

Margaux

MusicCity

MusicCity

…your smart connection to audio
on the Internet.

The fastest, most reliable alternative
service to Napster…and it's FREE.

Be Prepared If Napster Inc. Lets You Down

Napster Inc has announced that it will soon begin charging you a fee. That's if the courts don't order it shut down first. What will you do to get around it? The independent servers those that are not affiliated with

169073: rev 1

ItemID: 169073

From: Margaux Ayn Schaffer
To: darrell@indirect.com
CC:
BCC:
Subject: rev 1
Date: 2/2/2001 3:45:32 PM

Attachments:
musiccity_banner.gif

MusicCity.com

When the lights went off at Napster...

where did the users go?

MusicCity.com.

The #1 alternative to Napster

Millions of files

Hyper-fast searches

Turn us on here

MusicCity.com

169135: PDF Presentation{F}

ItemID: 169135

From: Margaux Ayn Schaffer
To: darrell@indirect.com
bcc:
bcc:
Subject: PDF Presentation{F}
Date: 2/17/2001 1:53:36 PM

Attachments:
5a.PDF

From: "Michael Weiss" <mike@streamcast.ws>
Date: Tue. 13 Feb. 2001 20:35:59 -0800
To: "Margaux Ayn Schaffer" <gidesign@uswest.net>
Subject: PDF Presentation

Smarter Connections

* * * *

MusicCity.com Peering Network

- The #1 Alternative Network to Napster.
- The Fastest Growing Peer2Peer Network Ever.
  - Growing at a rate of adoption exceeding Napster.
- One of the Most Widely Used Networks.

* * * *

Leveraging Huge Instlled Base

1. **The right time, the right place, the right product**
2. With tens of millions of current users, MusicCity leverages the Internet's most popular application by offering users a better product at a lower cost.
3. Proprietary technology based upon widely adapted open standards that remains backwards compatible to a huge installed user base
4. A series of technological and social factors has laid the foundation for the extraordinary growth of MusicCity.com
5. Highly viral results in substantially lower customer acquisition costs and marketing expenditures

* * * *

MusicCity Strategy To Monetize Traffic

- Music can appear to be free to users.
- Will deploy 75 year old radio broadcast model.
- Revenue from advertisers, sponsors and promotional marketing fees:

- Rich media ads appearing within Morpheus interface
- Audio ads inserted 2 minutes per hour
- Ads can be attached to specific files & transferred w/files
- Data mining services to record labels

- Revenues from premium positioning of search results.

169313: beta testing

ItemID: 169313

From: Margaux Ayn Schaffer
To: darrell@indirect.com
CC:
BCC:
Subject: beta testing
Date: 4/15/2001 10:45:44 PM

Attachments:

Hi Darrell,

I did not realize that the deadline is here!

For the most part, I have been downloading software. I think our biggest problem is going to be qualifying content…a lot of these programs are missing stuff; I am on my third copy of sonic foundy's ACID:-P

I have not had that mny surprises up to that point, I DID notice that the media folder and the application icon on the desktop have not updated, nor have the (left side) toolbar icon. I get the impression that this is artifactual to the fact that I simply copied the application from the Groove Network directory to my main drive rather than doing a fresh install. My main concern is that users who already have KaZaA installed will have the same problem (which is moot I guess).

I seem to be having problems finding music content, a lot of non results even on stuff like Elton John, but I guess that our network should make some difference since we have greater numbers.

I have had two instances of the web page not showing up, it is presently not coming up in the morpheus program. I rebooted and still was unable to establish a connection.

I hope this was of some help, I will follow-up with a new file for the theatre screen.

As always,

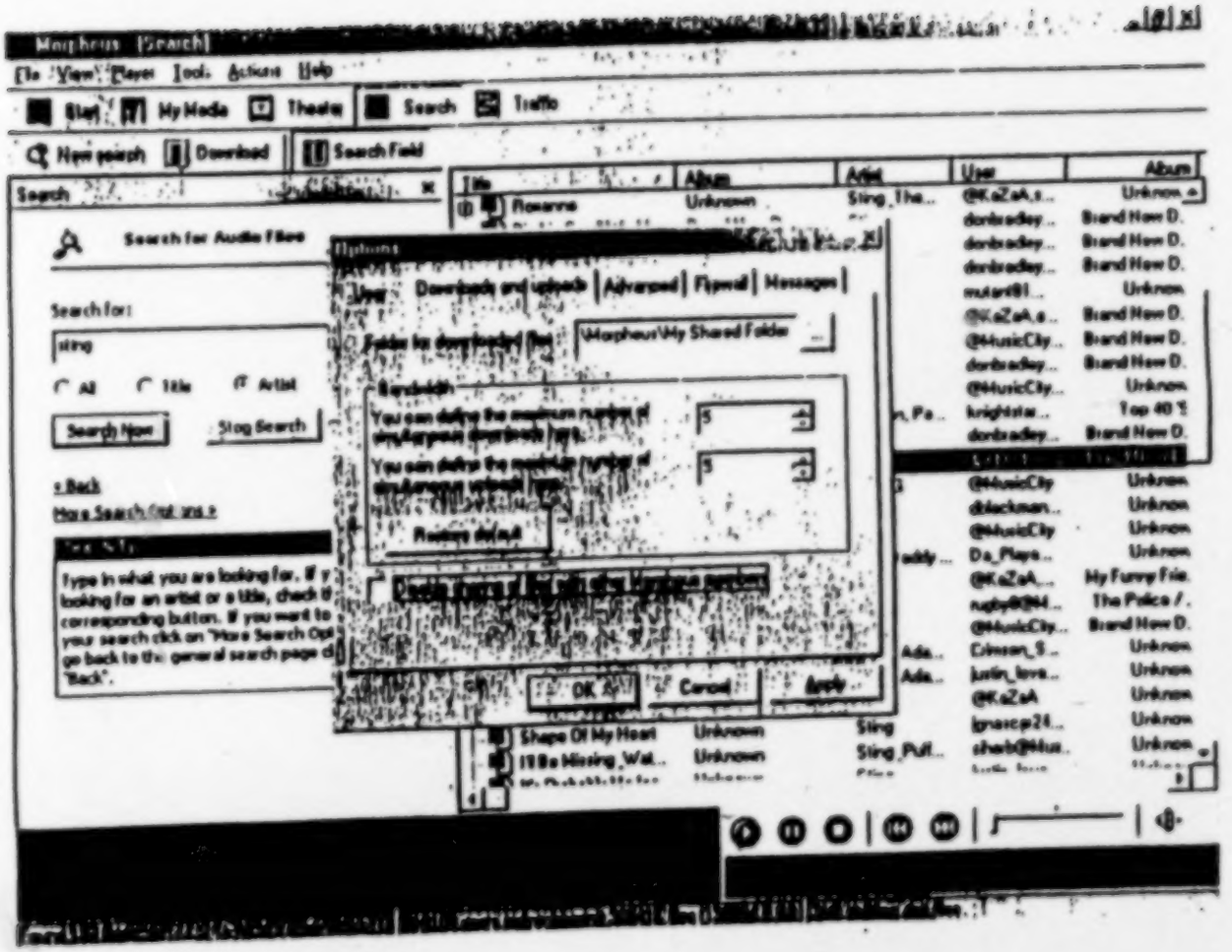
Me

169490: optimized thumbnails and screen shots

ItemID: 169490

From: Margaux Ayn Schaffer
To: matt@1dev.com
CC:
BCC:
Subject: optimized thumbnails and screen shots
Date: 7/9/2001 1:53:50 PM

Attachments:
max-uploads.gif
max-uploads_small.gif
more-sources.gif
more-sources_small.gif
song-length.gif
song-length_small.gif
user-menu.gif
user_menu.gif
user_menu_small.gif
user_right_click.gif
user_right-click_small.gif



JER 3510

Exh. 11, Pg. 1190

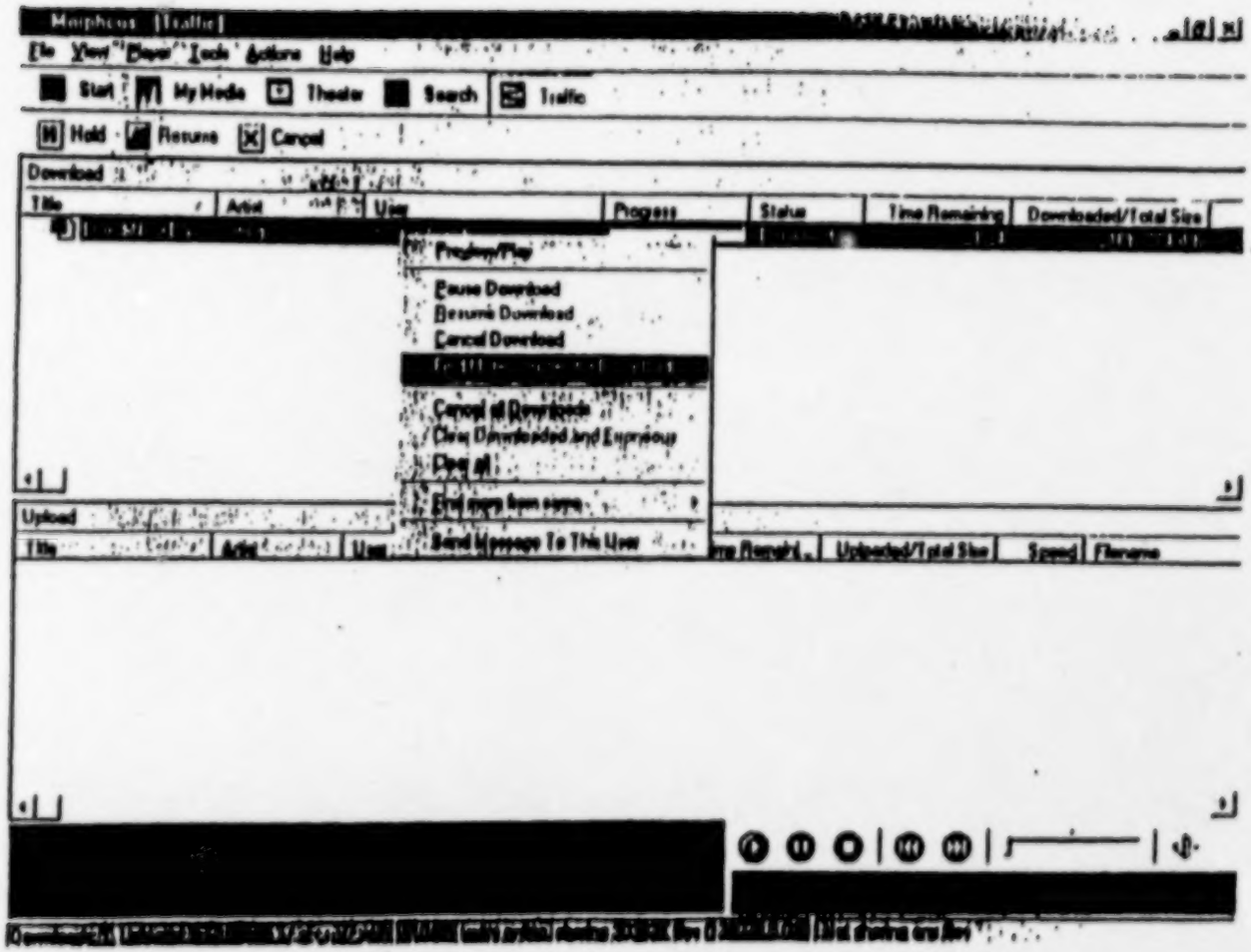
BEST AVAILABLE COPY

JER 3511

Exh. 11, Pg. 1191

Item ID: 169490.3

6/18/02



JER 3512

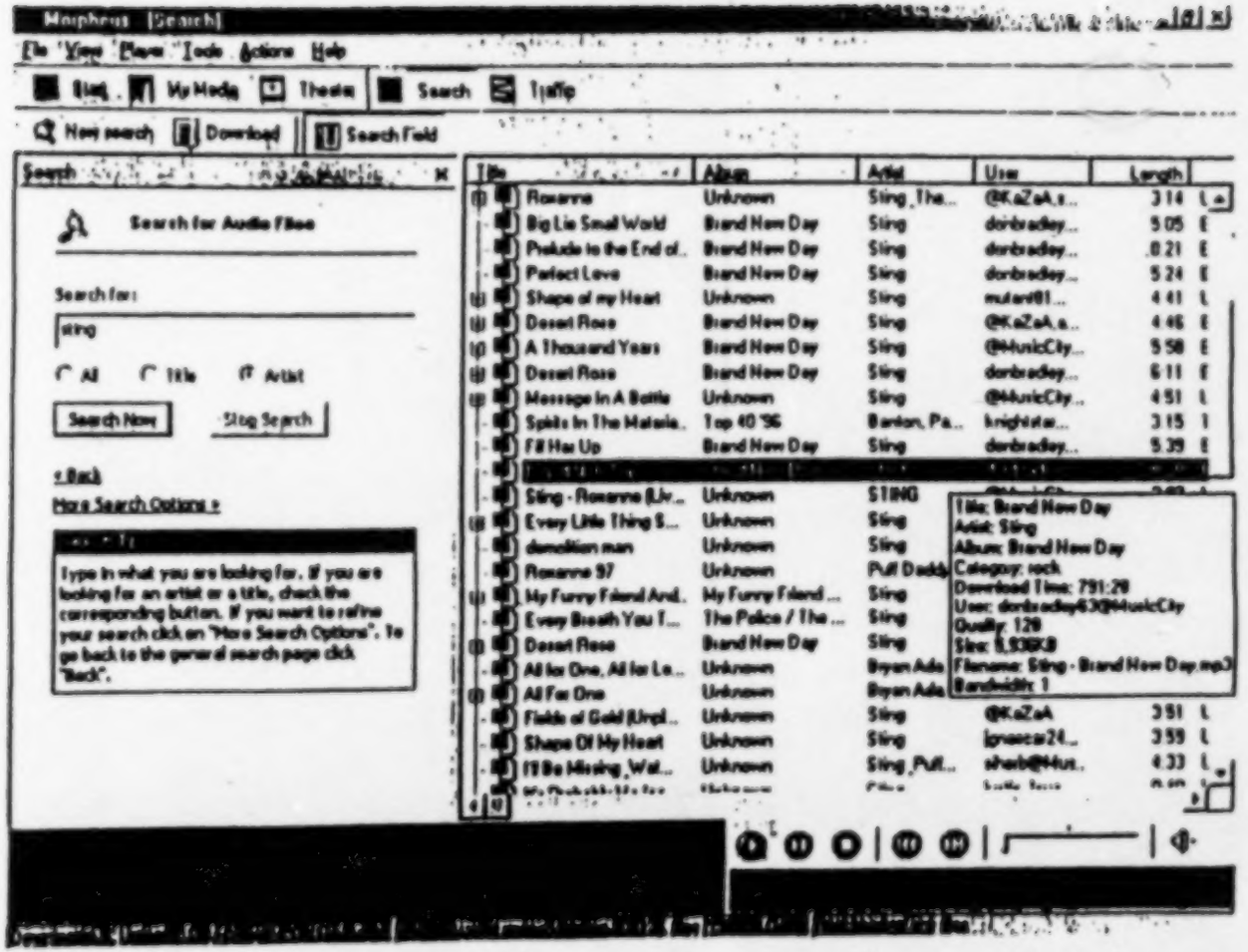
Exh. 11, Pg. 1192

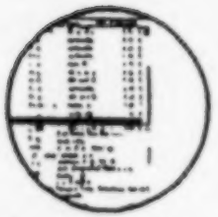
file://D:\030\Out\EMAIL\00000000000000001\00000000029612.ATT\00000000029616.gif

Item ID: 169490.5

6/18/02

BEST AVAILABLE COPY


Morpheus [Search]
File View Player Tools Actions Help
My Media
Theater
Search
Now search
Download
Search Field
Search for Audio Files
Search for:
sting
All
Title
Artist
Search Now
Stop Search
« Back
More Search Options »
Type in what you are looking for. If you are looking for an artist or a title, check the corresponding button. If you want to refine your search click on "More Search Options". To go back to the general search page click "Back".
Title
Album
Artist
User
Length
Roxanne
Unknown
Sting, The...
@KaZaA.s...
3:14
Big Lie Small World
Brand New Day
Sting
dorbraday...
5:05
Prelude to the End of...
Brand New Day
Sting
dorbraday...
0:21
Perfect Love
Brand New Day
Sting
dorbraday...
5:24
Shape of my Heart
Unknown
Sting
mutant81...
4:41
Desert Rose
Brand New Day
Sting
@KaZaA.s...
4:46
A Thousand Years
Brand New Day
Sting
@MusicCity...
5:58
Desert Rose
Brand New Day
Sting
dorbraday...
6:11
Message In A Bottle
Unknown
Sting
@MusicCity...
4:51
Spirits In The Materia...
Top 40 '96
Barton, Pa...
knightstar...
3:15
Fill Her Up
Brand New Day
Sting
dorbraday...
5:39
Sting - Roxanne (Liv...
Unknown
STING
Every Little Thing S...
Unknown
Sting
demolition man
Unknown
Sting
Roxanne 97
Unknown
Puff Daddy
My Furry Friend And...
My Furry Friend ...
Sting
Every Breath You T...
The Police / The ...
Sting
Desert Rose
Brand New Day
Sting
All for One, All for Lo...
Unknown
Bryan Ada...
All For One
Unknown
Bryan Ada...
Fields of Gold (Unpl...
Unknown
Sting
@KaZaA
3:51
Shape Of My Heart
Unknown
Sting
ignacio24...
3:59
I'll Be Missing You (...
Unknown
Sting, Puff...
sherb@Mus...
4:33
Title: Brand New Day
Artist: Sting
Album: Brand New Day
Category: rock
Download Time: 791:29
User: dorbraday43@MusicCity
Quality: 129
Size: 9,938KB
Filename: Sting - Brand New Day.mp3
Bandwidth: 1

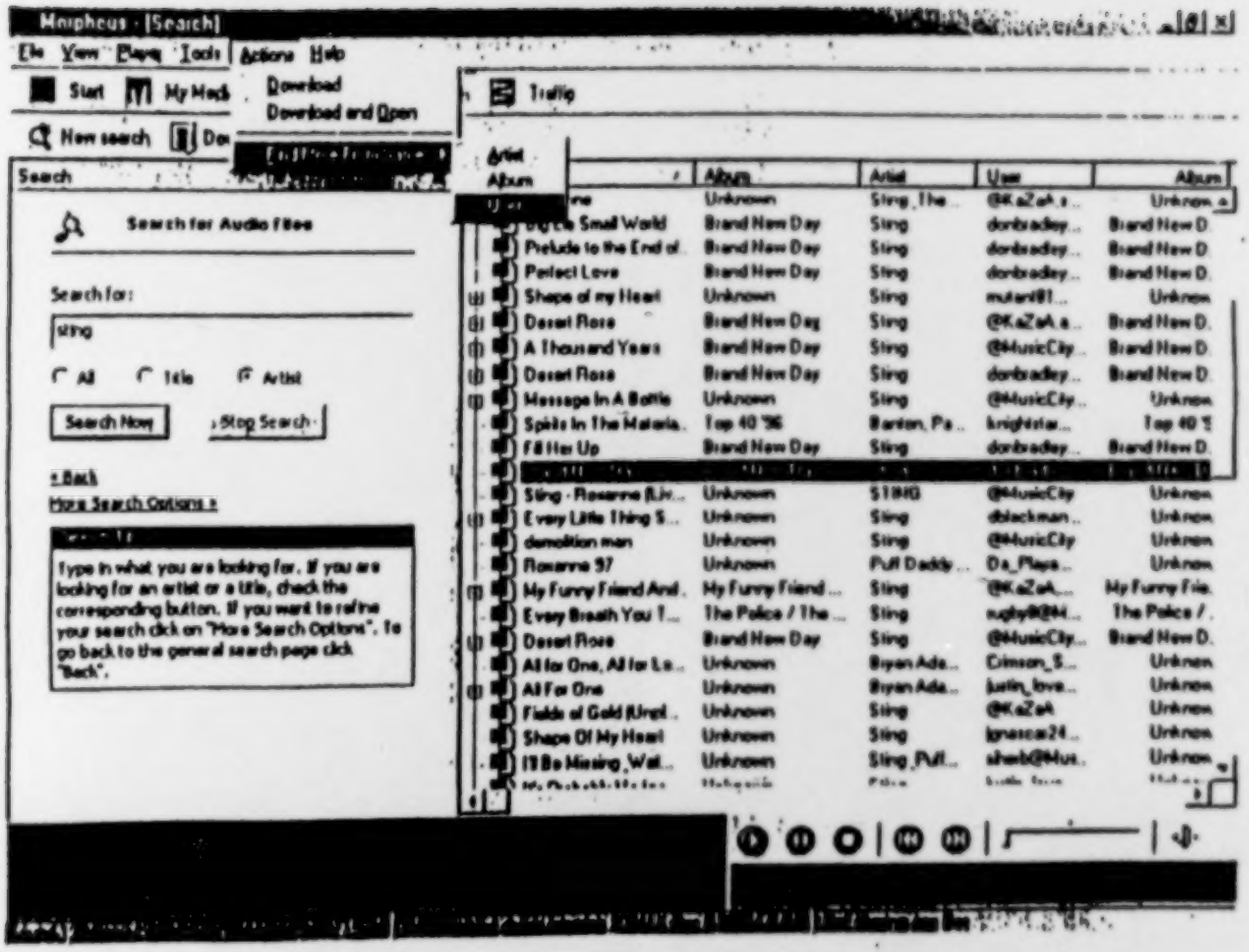


JER 3515

Exh. 11, Pg. 1195

Item ID: 169490.7

6/18/02



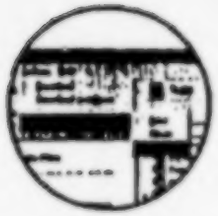
JER 3516

Exh. 11, Pg. 1196

Item ID: 169498.8

6/18/02

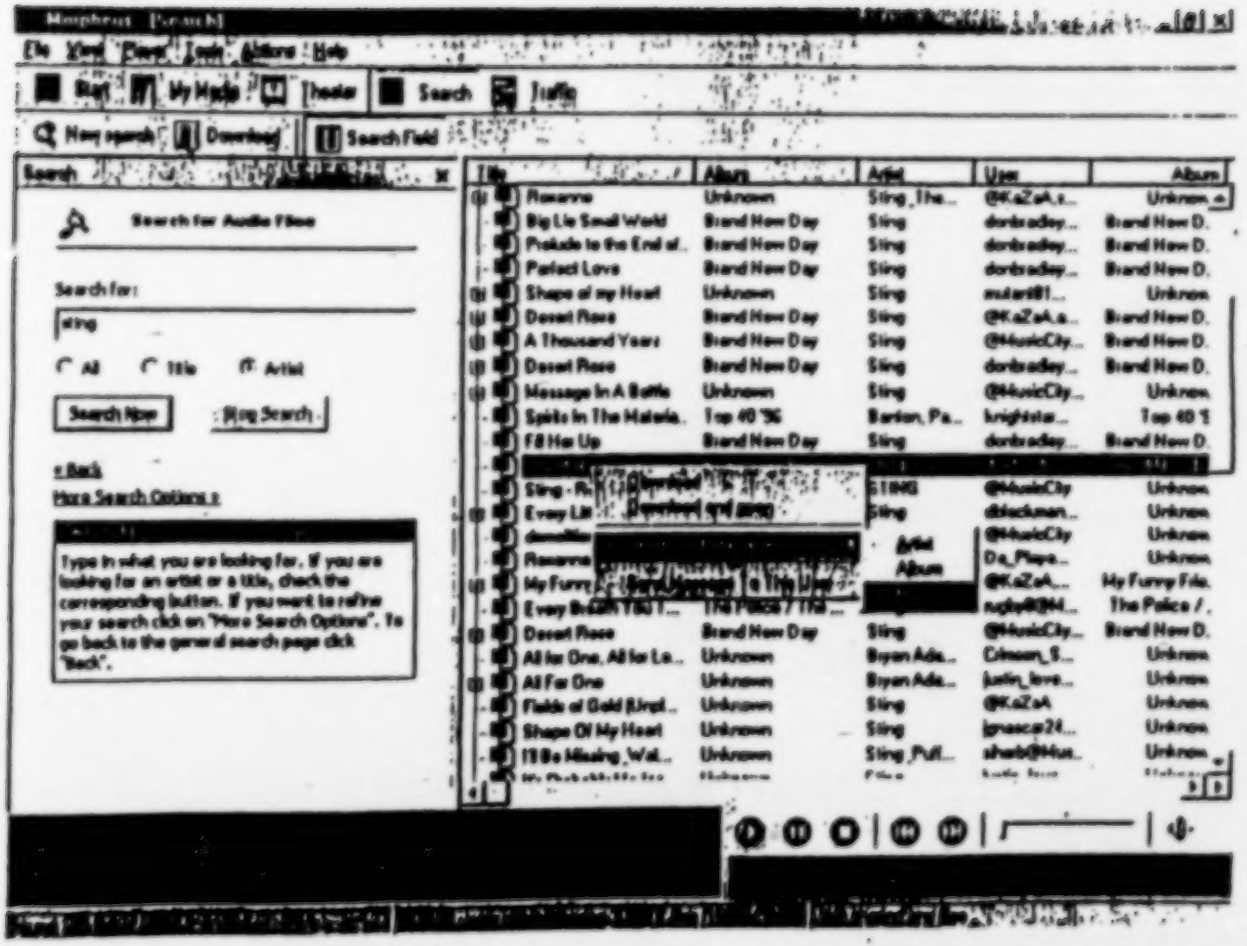
\\0000000000000001\0000000000029612.ATT\0000000000029619.elf



JER 3518

Exh. 11, Pg. 1198

\0000000000029612.ATT\0000000000029618.elf


Search for Audio Files
Search for:
sting
All
Title
Artist
Search Now
New Search
« Back
More Search Options »
Type in what you are looking for. If you are looking for an artist or a title, check the corresponding button. If you want to refine your search click on "More Search Options". To go back to the general search page click "Back".
Title
Album
Artist
User
Album
Roxanne
Unknown
Sting, The...
@KaZaA.c...
Unknown
Big Lie Small World
Brand New Day
Sting
dorbradley...
Brand New D...
Prelude to the End of...
Brand New Day
Sting
dorbradley...
Brand New D...
Perfect Love
Brand New Day
Sting
dorbradley...
Brand New D...
Shape of my Heart
Unknown
Sting
mstarr81...
Unknown
Desert Rose
Brand New Day
Sting
@KaZaA.c...
Brand New D...
A Thousand Years
Brand New Day
Sting
@MusicCity...
Brand New D...
Desert Rose
Brand New Day
Sting
dorbradley...
Brand New D...
Message In A Bottle
Unknown
Sting
@MusicCity...
Unknown
Spirits In The Materia...
Top 40 '96
Barton, Pa...
knightstar...
Top 40 '9
I'll Be Up
Brand New Day
Sting
dorbradley...
Brand New D...
Desert Rose
Brand New Day
Sting
@MusicCity...
Brand New D...
All for One, All for Lo...
Unknown
Bryan Ada...
Crimson_S...
Unknown
All For One
Unknown
Bryan Ada...
justin_love...
Unknown
Fields of Gold [Unpl...
Unknown
Sting
@KaZaA
Unknown
Shape Of My Heart
Unknown
Sting
ignascio24...
Unknown
I'll Be Missing You...
Unknown
Sting, Puff...
shwb@Mus...
Unknown

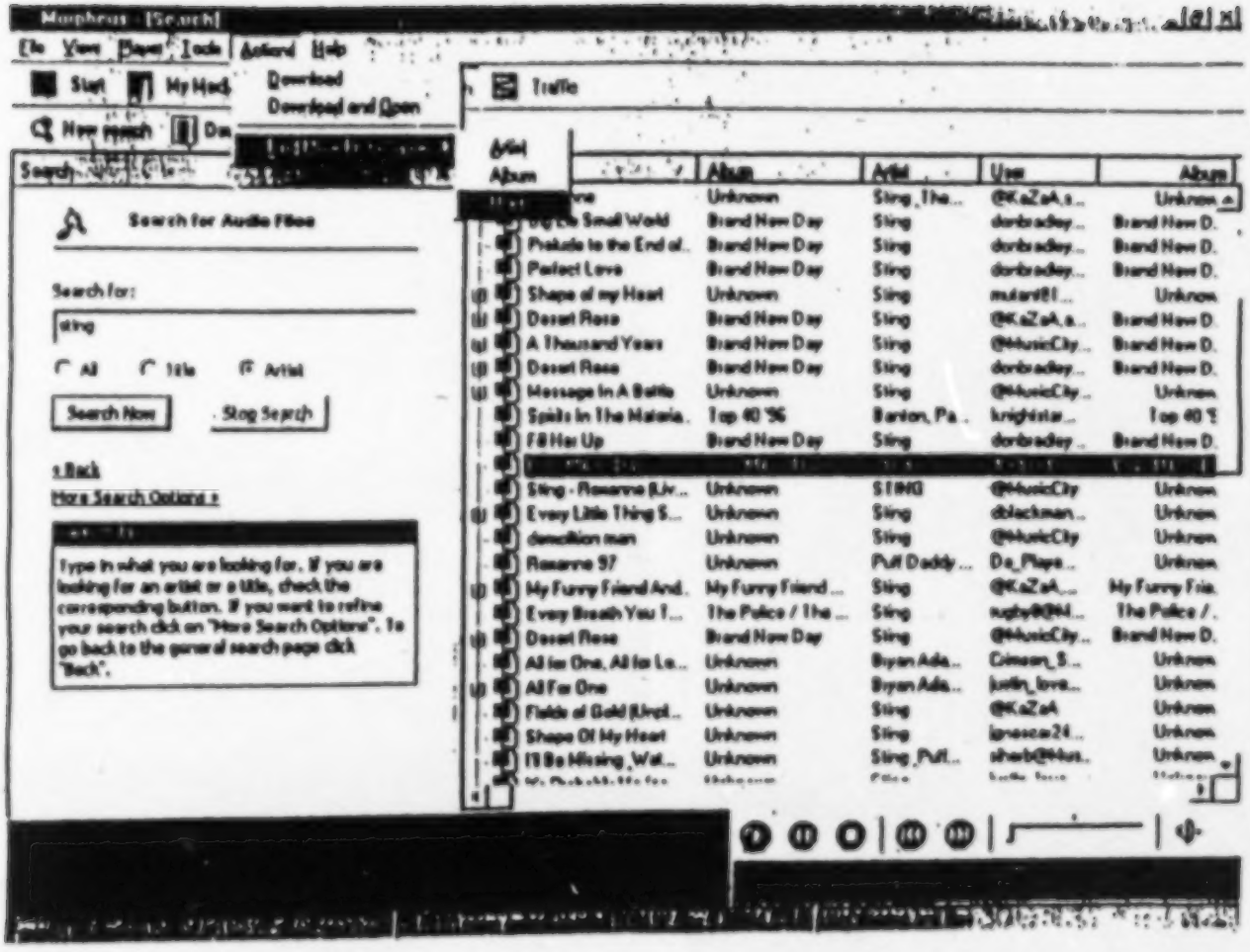
JER 3520

Exh. 11, Pg. 1200

Item ID: 169490.13

6/18/02

...\0000000000029612.ATT\00000000002961D.tif


Search for Audio Files
Search for:
sting
All
Title
Artist
Search Now
Stop Search
Back
More Search Options
Type in what you are looking for. If you are looking for an artist or a title, check the corresponding button. If you want to refine your search click on "More Search Options". To go back to the general search page click "Back".
Download
Download and Open
Traffic
Album
Artist
User
Unknown
Brand New Day
Sting
Desert Rose
A Thousand Years
Message In A Bottle
Spirits In The Materia...
I'll Be Missing
Shape Of My Heart
Fields of Gold
All For One
Every Little Thing S...
My Furry Friend And...
Every Breath You T...
The Police / The ...

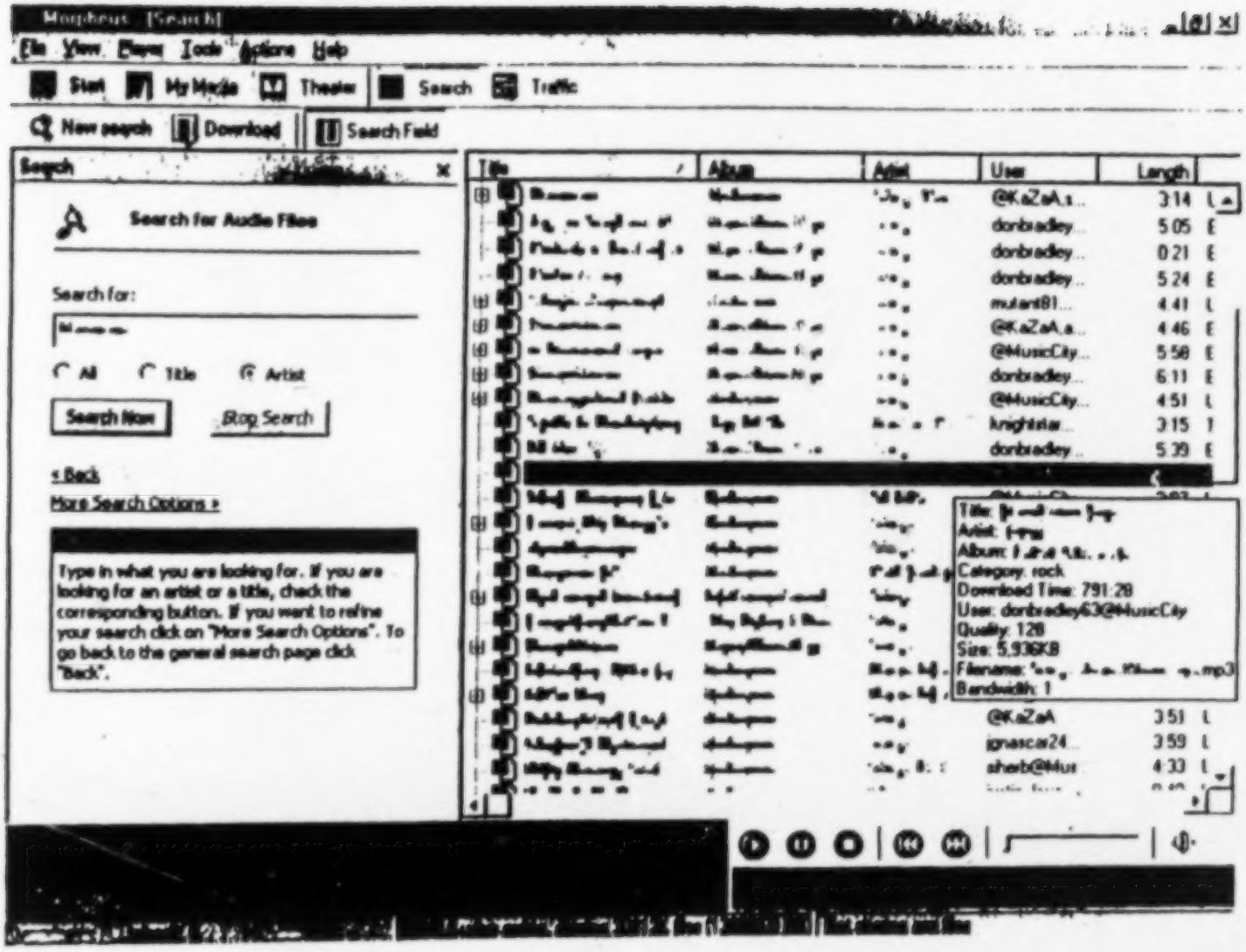
169502: incognito example

ItemID: 169502

From: Margaux Ayn Schaffer
To: Darrell@indirect.com
CC: **matt@1dev.com**
BCC:
Subject: incognito example
Date: 7/9/2001 4:54:54 PM

Attachments:
song-length.gif
song-length_small.gif

here is an example of keeping the examples but covering our asses.



JER 3523

Exh. 11, Pg. 1202

Item ID: 169502.2

6/18/07

Item ID: 169502.3

file://D:\OWA\Out\EMAIL\00000000000000001\00000000000296A1E.ATT\00000000000029620.gif 6/18/02

171303: Draft Letter

ItemID: 171303

From: Michael Weiss
To: Darrell Smith
CC: **matt@1dev.com**
BCC:
Subject: Draft Letter
Date: 1/5/2001 7:13:34 PM

Atachments:
MusicCity.com OpenNap Alternative Network Recap.doc

This is what I had in mind (Disregard page 1 in the attachment-I will remove before sending it):

In my earlier email to Bill, I referenced the hyper-growth we are experiencing since we deployed our OpenNap Alternative Network on Wednesday afternoon. Last month we discussed our plans to tap into the Napster community of 32 million users, but none of us expected to see such dramatic results in so short a time....and without any promotion or marketing on our part whatsoever. It is amazing to watch firsthand just how powerful the peer-to-peer movement really is!

My recap is a little lengthy, so I attached the rest of it in a Word document for easier reading. I think it is vital that each of you take a few minutes to read it in its entirety. I believe that as both Board members and investors, we should have a telephonic update and strategy session ASAP, perhaps on Tuesday afternoon. We'll coordinate a time that works best for everyone.

MusicCity.com OpenNap Alternative Network Recap

In my earlier email to Bill, I referenced the hyper-growth we are experiencing since we deployed our OpenNap Alternative Network on Wednesday afternoon. Last month we discussed our plans to tap into the Napster community of 32 million users, but none of us expected to see such dramatic results in so short a time...and without any promotion or marketing on our part whatsoever. It is amazing to watch firsthand just how powerful the peer-to-peer movement really is!

My recap is a little lengthy, so I attached the rest of it in a Word document for easier reading. I think it is vital that each of you take a few minutes to read it in its entirety. I believe that as both Board members and investors, we should have a telephonic update and strategy session ASAP, perhaps on Tuesday afternoon. We'll coordinate a time that works best for everyone.

MusicCity.com OpenNap Alternative Network Recap – 1/5/01

We went online on Wednesday morning (1/3/01) with 4 servers that could be accessed through the napigator.com site. By noon we had 315 simultaneous users sharing 55,000 MP3 files within the network. By 2:00 pm the following day (Thursday), we added a 5th server and our traffic jumped to 639 simultaneous users sharing 175,000 MP3 files. We then brought 5 more servers on line and had 1501 simultaneous users sharing 316,000 MP3 files by Thursday evening. This would have represented approximately 12,000 unique users for Thursday.

Today (Friday), our growth continued and by noon today we had 2344 simultaneous users sharing 711,000 MP3 files across our network. Later today, that number has risen to 2814 simultaneous users sharing 738,000 MP3 files. This will equate to close to 20,000 unique users once the day ends. Effectively, we are moving approx. 3 terabytes of data across

our network right now. The best part of this is that we are providing the peer-to-peer networking for this data without having to incur the bandwidth costs for transmitting this amount of data because the actual transmission takes place between the peering clients and not us.

Even though we have spent the last month testing our OpenNap servers off-line (which were used from the existing MusicCity.com hardware previously purchased and reconfigured to run the Linux based OpenNap software) to be sure we could handle heavy traffic, we did not expect it to come this soon. Within the last 48 hours we have accomplished the following:

- We are the only alternative Napster network that owns and controls all of the servers on its network.
- We are able to provide faster search results than all other alternative Napster networks...and second only to Napster Inc, itself.
- Just like Napster Inc., we provide cross-searching functionality between all our servers – giving the user a combination of the fastest download times and greatest number of files for sharing. The other alternative Napster networks do not offer this feature.
- Similar to Napster Inc. we use an ultra-fast high speed professional Internet backbone network providing users with dependable connections and minimal drop-offs to avoid interruptions in their downloads.

We have already caught the attention of MyNapster (The January issue of Wired Magazine calls them the #1 alternative to Napster), who tracked our contact info through Network Solutions and invited us to partner with them. At the current rate of growth and using our existing equipment, we believe that we can quickly become one of the leading Alternative Napster Networks within weeks (surpassing

those that have been around for longer than a year). With our current equipment we should be able to handle 50,000 simultaneous users, which would represent approx. 1 million unique daily users. We can exponentially increase and accelerate our growth by simply adding more servers.

Having 20 servers on-line will double our traffic instantaneously and help us reach 1 million unique users in half the time.

We have put this network in place so that when Napster pulls the plug on their free service (or if the Court orders them shut down prior to that), we will be positioned to capture the flood of their 32 million users that will be actively looking for an alternative. Napster might easily loose over half of their user base and we could be in a position to pick up a majority of them. It is not inconceivable that our user numbers could jump 1000%+...and this could very easily happen within the next 60 days.

It was always our intent to use our alternative Napster Network (which we are operating under the MusicCity.com brand) to be able to capture email addresses of our initial target market so that could promote our StreamCast Morpheus interface to them and quickly capture a significant user base way ahead of our projections and without counting on third party companies.

Since we have experienced this dramatic growth within just a few days, I have directed our staff to quickly deploy a new MusicCity.com website that focuses on our OpenNap Alternative Network. It will be used to promote the Network and increase traffic (as I said our growth so far has come without any marketing effort whatsoever, other than a listing on the Napigator.com site), to capture email addresses of those that will register for updates and to allow the current users to "tell a friend" electronically (and have us capture

those email addresses, as well). Once the site is up, we have a plan to give us some quick notoriety in the media (and at the expense of Napster Inc.).

This is a departure from the plans we made at the last Board meeting to stop development of the client side interface to begin focusing on developing a server side software solution, as suggested by Macromedia. We believe, at the very least, that Macromedia opened our eyes to a very unique void in the marketplace that we can fill. But since we have limited manpower (and even more limited time and money), I think we would be remiss in not sizing on the opportunity at hand to "steal" the Napster user base and secure an instant consumer base for our Morpheus client interface.

Since time is of the essence, for both the opportunity at hand and the reality that the sands in our hourglass are quickly emptying, I suggest that we have a strategy phone session at everyone's earliest convenience in the early part of the week. I'd like to shoot for Tuesday afternoon and Steve and I will coordinate everyone's schedule to set an exact time and day. If you have any thoughts in the meantime, please do not hesitate to email or phone me over the weekend.

171327: Congratulations To Us!!!

ItemID: 171327

From: Michael Weiss
To: Steven Griffin; Paul Panetti; Margaux Ayn Schaffer; Derek Anderson; Darrell Smith
CC:
BCC:
Subject: Congratulations To Us!!!
Date: 1/10/2001 3:56:59 AM

Attachments:

I think our little team might have pulled off a miracle. I am sure you are all watching our user base grow on our "MusicCity OpenNap Alternative Napster Network", but at 4 am (PST), its worth stating:

14,563 simultaneous user
2.03 million files
Astounding
In one week we've leapfrogged to being the #6 alternative Napster network.
What's next?
New website goes up later today

GO TEAM!!!!

171405: New High {F}

Item ID: 171405

From: Michael Weiss
To: Darrell Smith
CC:
BCC:
Subject: New High {F}
Date: 1/18/2001 9:32:37 PM

Attachments:

RE: New HighFYI
—Original Message—
From: Bill Kallman [mailto:bill@timberlinevc.com]
Sent: Thursday, January 18, 2001 9:01 PM
To: "Michael Weiss'
Subject: RE: New High

Mike,

an excerpt from press on www.static.com

Nabbing the Napster factor. "Thanks for the great idea. See ya."

Napster may be a sacrificial lamb. While popular musical artists challenge the legality of the company's unique model, other startups are poised to exploit Napster's distributed application model in similar - and perhaps somewhat more lawful - ways. If the music industry is successful in shutting down Napster, the Brainchild of founder Shawn Fanning may be remembered not for its swap of MP3 files but - as Silicon

Valley venture capitalist Steve Jurvetson puts it - "a whole new substrate for collective intelligence."

Static.com has developed a downloadable client that transforms any DSL-connected PC into a member of a smart network of servers. Unlike Napster, Static's PCs-turned-servers coordinate with one another, exchanging valuable information about their bandwidth, storage, and processing availability. For example, when a Static-enabled PC is struggling to stream video to its users, the technology reroutes some of streams to other PCs the network isn't exploiting to capacity. To make money static will sell its software to ISPs, which in return will offer piecemeal bandwidth and caching for their users. Static's Jacob Riskin says, "ISPs see our technology as way to Akamize their user base."

Palo Alto, California-based Tacit Knowledge Systems, sells enterprise software that quietly rides on top of corporate email systems and gradually, through intelligent parsing and keyword analysis, learns which employees are knowledgeable in particular areas. For instance if the CEO needs to talk to the one employee who knows the most about a customer's industry, the Tacit system can figure it out.

Sun Microsystems*, motto has been The Network Is The Computer, and this will only become truer over time. Napster was just the beginning.

—

Timothy Kendall

Forbes ASAP
Aug 21, 2000

ALSO see the confidential letter I sent to our LP and partner steve. Like I said, get your technology written down and your IP protected the best you can.

—Original Message—
From: Michael Weiss
To: William R. Kallman; Jeff Tung; Anthony J. Miadich
Cc: Steve Griffin; Roger Hamilton; Darrell Smith
Sent: 1/18/01 2:06 PM
Subject: New High

January 18, 2001 1:00 pm

We just hit a new all time high with our 10 servers: 72,283 users sharing 15,006,322 files.
The chat rooms went wild once we crossed the 70,000 user plateau.
We have commandeered nearly 35% of all the alternative Napster users. These are similar numbers to Napster (except they have 10X the number of servers)
This has just about maxed us out, (I think Darrell has called it a Nuclear Meltdown) as our equipment can not handle this much traffic–even with all the fixes we put in place. (50,000 is safe / 60,000 is our red zone).
Darrell and Derek are keeping their thumbs in the hole in the dam.
We have switched our Dell order to VA Linux 100% as it can handle more than double the capacity of the Dell equipment for almost the same price. The switch was also mandatory since Dell was not able to make their delivery date as they committed.
New servers are being installed this weekend, should be tested and up no later than Tuesday.
We expect to also debut our MusicCity Navigator client (a forerunner to Morpheus–we'll have users upgrade to

Morpheus once ready)–the client has similar functionality to the Napster client.
We are getting more converts every day (should I say minute)…we watched one of our servers increase by 4,000 users within 60 seconds just two hours ago.
We have one or two more tricks up our sleeves that could drive enough traffic to fill up our new servers rather quickly.
The alternative Napster community seems to be getting behind us in droves.
We even have developers donating their time helping to write programs for the network.
Stay tuned!

172262: How does a consumer know how fast a peer connection is {F}

ItemID: 172262

From: Michael Weiss
To: Darrell Smith
CC:
BCC:
Subject: How does a consumer know how fast a peer connection {F}
Date: 4/21/2001 9:52:58 AM

Attachments:

----Original Message----
From: Steve Griffin[mailto: sgriffin@musiccity.com]
Sent: Saturday, April 21, 2001 4:09 AM
TO: Michael Weiss{E-mail}
Subject: how does a consumer know how fast a peer connection is

Mike. I downloaded bearshare to compare, and they are much larger. I typed in garth brooks and got 2700 songs, on Morpheus I got 60, also I could not tell how fast the connection was on our program, so if I choose a 56k modem I am not sure how to determine. Any ideas

Steve

173503: StreamCast Networks logo file and other stuff{F}

ItemID: 173503

From: Paul Panetti
To: Darrell Smith
CC:
BCC:
Subject: Stream Cast Networks logo file and other stuff{F}
Date: 9/29/2000 7:04:28 AM

Attachments:

Hi Darrell,

I can't use this logo GIF when I reduce it to 100x100 to fit into the player. I can't read it.

FYI: The player is done, pop-ups and everything. The song selection interface needs a little tweaking. I started using buttons just to make sure it was working. Now I just need to make it pretty. So I'll finish that up and send you the whole thing.

Note: I never did receive any icons, Audio Selection or Services. Also I download some Britney Spears but they're pretty big. For the Harry Potter book and Tony Robbins audio; I just put in place holders because I don't have the final clips. Hopefully the selection interface will be flexible enough to put whatever audio we want in here.

I'll get back to you on the details,

Paul...

174571: Try the NEW & IMPROVED MusicCity Network {F}

ItemID: 174571

From: Steve Griffin
To: Darrell Smith
CC:
BCC:
Subject: Try the NEW & IMPROVED MusicCity Network {F}
Date: 4/17/2001 12:16:17 PM

Attachments:

Here is the email. Jody sent me a test. Please feel free to change. I can have it out with 30 minutes after you give the word.

Sent from my BlackBerry Wireless Handheld.

----Original Message----
From: MusicCity Networks info@artist.rs88.net
To: sgriffin@musiccity.com sgriffin@musiccity.com
Sent: Tue Apr 17 13:56:00 2001
Subject: Try the New & IMPROVED MusicCity Network

MusicCity.com is upgrading to a new peer-to-peer technology platform that will provide IMPROVED PERFORMANCE where you will. ALWAYS CONNECT to the network. You will need to download the free Morpheus application – you key to the New & Improved MusicCity Network – in order to continue using MusicCity. Now you'll have FASTER SEARCHES, MORE USERS, ALL MEDIA TYPES, and NO WAITING. Everything is FULLY

ENCRYPTED to protect privacy and protect against unauthorized intrusions. Repeat: In the near future, MusicCity will only be available by using "Morpheus." Visit our Web site for details at www.MusicCity.com.

This message was sent by The Artist Cooperative using Responsys Interact (TM). Click here if you prefer not to receive future e-mails from The Artist Cooperative. Click here to view our permission marketing policy.

MusicCity.com

MusicCity.com is…

A server driven distributed computing platform that allows a P2P environment the ability to distribute digital content to consumers around the world.

MusicCity.com has developed a patent pending break through technology resulting in an internet music model that can achieve profitability even paying high royalty rates to the Music Industry.

Our Approach

- We have taken advantage of the largest consumer application on the Internet (Napster) and are offering a superior product
- This product strategy will result in rapid acceptance of the Music Morpheus client
- We will use rich media and our PeerCasting™ technology to create profitable revenue steams, which still provide 76% of Napster users with what they want "Free Music."
- These same revenue streams will be used to offer the labels another revenue channel vs. a subscription model (Just as the radio model provides free music, it is paid for via an advertising model)

What Makes Us Better Than Napster?

- Intelligent song search – displays user friendly results by filtering all erroneous info and cross matching the users queries against the Muze music database.
- Intelligent file selection – The user is matched with the best peer candidate for downloading from.
- Auto find – If a selected file is not immediately available on the network, user will be notified once the file becomes available.
- Auto reconnect – User is automatically reconnected to the network to finish downloading file if interrupted.

What Makes Us Better Than Napster?

- Playback downloaded files and streaming audio content.
- Can share many data types other than music, i.e. images, web pages, documents.
- Can play user created play lists and play list from others.
- Unlike like Napster Inc., Musiccity.com provides cross-searching functionality between all its serves-giving users a combination of the fastest search times and greatest number files returned during a song search.

What Makes Us Better Than Alternative Napster?

- MusicCity.com is the only alternative Napster network that owns and controls all of the serves on its network.
- MusicCity.com provides the fastest search results than Napster and the others due to optimization.
- MusicCity.com network provides far superior performance quality than all other alternative Napster Networks with 24/7 reliability.

Why We Will Win!

- Viral approach to generating site traffic
  - The alternative Napster network
  - Referrals from users due to our network advantages
  - Automatic computer driven chat room bots
- Streaming music on the internet is not viable because it costs money every time a user is added, this is why every existing streaming radio model is has failed dramatically.
- The MusicCity business model has already been proven to be economically viable due to our PeerCasting technology.
- We achieve the fixed cost model of broadcast radio for the delivery of digital content over the net.

Market Advantages

- The Benefits of a P2P Internet radio business model vs a Streaming Media Internet Radio business model:
  - No bandwidth costs
  - No Storage costs
  - No product costs to acquire music
  - Ability to get all the music
  - World coverage with no restrictions
  - Reduced manpower costs
  - Reduced customer acquisition and marketing costs

MusicCity.com Market Acceptance

- Within 3 weeks of launching the MusicCity Alternative Network, it has become the second fasted growing P2P network, second only to Napster:
  - Over 5.4 million connections in 12 days
  - Over 910,000 unique users who have logged on with a user name and password.
  - Over 400 searches per second
  - 3 million files available, more than even Napster

- Quickest response time for searches
- User numbers increasing daily at hyper-growth rates

A Division of StreamCast Networks

MusicCity Business Strategy

- Leverages the most talked about and used p2p application in the world Napster
- This creates Accelerated Acceptance and placement of M2 onto consumers computers
- M2 provides a persistent on screen presence opening up substantial volume of advertising/revenue opportunities
- Using the proven profitable business model of broadcast radio for revenue generation, meeting the consumers need to "keep the music free"
- Server Based M2 to ISP provides a subscription based model
- PeerCasting and Morpheus provide the tools that allow MusicCity to create a profitable business model
- MusicCity business model becomes a marketing vechile to promote other Streamcast Vertical Market Applications

Why p2p Will not be stopped

- Users are going to be giving copies of movies, music, and books to other users directly, and these industries need to restructure themselves in acknowledgement of this fact.

- *Coming from the chief executive of one of the world's largest media companies*

Mike and Darrell add dates

Morpheus Interface Functions For MusicCity Client

- **P2P Access:** Simultaneously use all the popular peer-to-peer file swapping applications, such as Napster, OpenNap, Gnutella and FreeNet
- **IM:** Send and receive instant messages across all the popular messaging applications, such as AOL, Yahoo, ICQ and Microsoft—even if the recipient and sender are using different applications;
- **QuickSearch:** Simplify searches by tying into the Muze database; and provide enhanced album/song/artist/artwork info (rid hassle of Napsteresque cryptic files)
- **FQC: File Quality Control** - We find the optimal music file of the song you want to download (listen to); ranking the quality of each song and weeding out bad files automatically

Our Approach with Music Morpheus(M2)

- We are taking advantage of the largest consumer application on the Internet (Napster) and providing a superior product without a proprietary file sharing client
- This product will result in rapid acceptance of the M2 client
- We will use rich media and streaming audio to create profitable revenue streams, which still provide 76% of Napster users what they want "Free Music".
  - These same revenue streams will be used to offer the labels another revenue channel vs a subscription

- We will offer a subscription by providing M2 via an ASP application with local and national ISP's